

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
3
4 SANDRA LITTLE COVINGTON, et al.,) CASE NO. 1:15CV399
5 Plaintiffs,)
6 v.)
7 STATE OF NORTH CAROLINA, et al.,) Greensboro, North Carolina
8 Defendants.) July 27, 2017
9)
10 _____ 10:02 a.m.
11

12 TRANSCRIPT OF THE **MOTIONS HEARING**
13 BEFORE THE HONORABLE THOMAS D. SCHROEDER
14 THE HONORABLE CATHERINE C. EAGLES
15 UNITED STATES DISTRICT JUDGES
16 and
17 THE HONORABLE JAMES A. WYNN
18 UNITED STATES FOURTH CIRCUIT JUDGE
19

20 APPEARANCES:

21 For the Plaintiffs: ANITA S. EARLS, ESQ.
22 ALLISON J. RIGGS, ESQ.
23 SOUTHERN COALITION FOR SOCIAL JUSTICE
24 1415 W. Highway 54, Suite 101
Durham, North Carolina 27707
25
EDWIN M. SPEAS , JR., ESQ.
POYNER SPRUILL, LLP
301 Fayetteville Street, Suite 1900
Raleigh, North Carolina.
26
For the Defendants: PHILLIP J. STRACH, ESQ.
27 MICHAEL D. MCKNIGHT, ESQ.
28 OGLETREE DEAKINS NASH SMOAK & STEWART
29 P. O. Box 31608
Raleigh, North Carolina 27622
30
ALEXANDER M. PETERS, ESQ.
JAMES BERNIER, ESQ.
N.C. DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, North Carolina 27602
31
Court Reporter: BRIANA BELL, RPR
32 Official Court Reporter
33 P.O. Box 20991
Winston-Salem, North Carolina 27120
34
35

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1 P R O C E E D I N G S

2 **JUDGE EAGLES:** Good morning. Just a second. We
3 would like to be able to see everybody. Excuse us just a
4 moment.

5 Okay. Now we're set. All right. We're here for the
6 noticed hearing in Covington against the State of North
7 Carolina. The Plaintiffs will have 90 minutes to present any
8 evidence and make any argument they wish. The Defendants, the
9 same. We plan to call on Plaintiffs first, and if you want to
10 save any time for rebuttal, it's up you. We are hoping to
11 finish without a lunch break. So we'll take a short break, I'm
12 sure, at some point, but that's our anticipation in terms of
13 scheduling.

14 If I can have anyone who will be speaking on behalf
15 of the Plaintiffs identify themselves for the record.

16 **MS. EARLS:** Good morning, Your Honors, Anita Earls of
17 the Southern Coalition for Social Justice for the Plaintiffs.

18 **MR. SPEAS:** Good morning, Your Honors, Edwin Speas
19 with Poyner Spruill for the Plaintiffs.

20 **MS. RIGGS:** Good morning, Your Honors, Allison Riggs
21 on behalf of the Plaintiffs.

22 **JUDGE EAGLES:** Good morning. And for the Defendants?

23 **MR. STRACH:** Good morning, Your Honor, Phil Strach
24 with Ogletree Deakins for the Legislative Defendants.

25 **MR. MCKNIGHT:** Good morning, Your Honors, Michael

1 McKnight for the Legislative Defendants.

2 **MR. PETERS:** Good morning, Your Honor, Alexander
3 Peters of the Attorney General's Office for the State of North
4 Carolina and the State Board of Election.

5 **JUDGE EAGLES:** All right.

6 **MR. BERNIER:** Good morning, Your Honors, James
7 Bernier from the Attorney General's Office on behalf of the
8 State Defendant and the Board of Elections, Your Honor.

9 **JUDGE EAGLES:** Thank you. I believe we are ready to
10 proceed if there is nothing we need to take up before we get
11 started. I believe you all worked out the motion to squash,
12 and we saw the stipulation.

13 **MS. EARLS:** That's correct, Your Honor.

14 **JUDGE EAGLES:** Do the Plaintiffs plan to call any --
15 are you still planning to put on some witnesses?

16 **MS. EARLS:** Yes, Your Honor, we would like to call
17 some witnesses.

18 **JUDGE EAGLES:** All right. I'll let you proceed.

19 **MS. EARLS:** Thank you, Your Honor. Just to orient
20 the Court, we filed a motion to set deadlines for a remedial
21 plan. That's Doc. 150. And then we filed a separate motion
22 for an expedited evidentiary hearing on Plaintiffs' previous
23 motion for additional relief, and that's Document 151.

24 We filed two separate motions because, in our view,
25 there are two separate and independent decisions for the Court

1 to make. The first one is the timetable by which the General
2 Assembly will have to draw remedial maps. So our evidence this
3 morning -- we'll start with evidence that relates to that
4 motion, and then the second motion is regarding whether or
5 not -- independent of what the timetable is for drawing a map,
6 whether or not the circumstances equitably justified the
7 granting of Plaintiffs' request for a special election, and we
8 will also offer evidence relating to that second motion and
9 that second issue.

10 That's the issue relating to which the Supreme Court
11 identified three factors: The severity and nature of the
12 particular constitutional violation, the extent of likely
13 disruption to the ordinary processes of governments if early
14 elections are imposed, and then the need to act with proper
15 judicial restraint when intruding on state sovereignty, and we
16 will also be offering evidence that relates to those three
17 questions.

18 So with that, I think we are ready to call our first
19 witness.

20 **JUDGE EAGLES:** Go ahead.

21 **MR. SPEAS:** Your Honors, we would call Representative
22 Grier Martin to the stand.

23 **REPRESENTATIVE D. GRIER MARTIN, PLAINTIFFS' WITNESS,** being
24 first duly sworn, at 10:06 a.m., testified as follows:

25 DIRECT EXAMINATION

1 **BY MR. SPEAS**

2 Q Good afternoon. Would you state your name for the record,
3 please.

4 A My name is Grier Martin, full name is David Grier Martin.

5 Q And would you briefly describe your background for the
6 Court.

7 A Sure. I'm currently a member of the North Carolina House
8 of Representatives. I'm in my seventh two-year term. I am a
9 lawyer, born in North Carolina. I practiced law for several
10 years, served in the United States Army Reserve, and I'm a
11 veteran of Afghanistan and currently live in Raleigh.

12 Q And you are a Democrat?

13 A I am.

14 Q And a member of the House Democratic Caucus?

15 A Yes.

16 Q As a member of the House Democratic Caucus, do you have
17 any responsibility for the upcoming elections to the House of
18 Representatives?

19 A Yes, I do. I am our Democratic conference chair, which
20 means that I head up all campaign operation for North Carolina
21 House Democrats.

22 Q Would you briefly describe for the Court what that role
23 entails, the duties that you will perform?

24 A Sure. It includes responsibility for all things campaign
25 related. A large part of my job is recruiting good candidates

1 ideally in all 120 House districts throughout the state and
2 then equipping them with what they need to succeed and win
3 their races.

4 Q Okay. Now, on August 11, 2016, the Court found that 19
5 districts in the House plan and 9 districts in the Senate plan
6 were unconstitutional. Has the legislature taken any actions
7 since then to put new House districts in place?

8 A No.

9 Q Has the legislature taken any action since then to put new
10 Senate districts in place?

11 A No.

12 Q Has the legislature been in session since August 11, 2016?

13 A Yes.

14 Q Did they meet in special session twice in December of
15 2016?

16 A Yes, we did.

17 Q And did the legislature meet in regular session beginning
18 January 11, 2016, and only recently adjourning?

19 A Yes.

20 Q And during that time, in fact, did the Governor issue an
21 executive ordering calling on the General Assembly to meet to
22 enact new plans?

23 A Yes, he did.

24 Q And did the General Assembly do anything with regard to
25 the Governor's executive order?

1 A We did not.

2 Q Now, has the absence of districts, valid districts, had an
3 adverse impact on you in the performance of your duties as
4 chair of the House Democratic Caucus Campaign Committee?

5 A Yes, it made my life very difficult.

6 Q Could you explain the difficulty for the Court, please?

7 A Right. So this is the third election cycle which I've
8 served in this capacity and previously as a candidate. The
9 level of interest, not just in general elections, but in
10 actually running as a candidate -- as a Democrat candidate is
11 unlike anything I have ever seen in my involvement in politics.
12 So that's in my mind a good thing, but the problem is these
13 candidates who want to step up and serve -- run and serve do
14 not know which district they might run to represent. So what
15 that means is when they come to me and say they're interested
16 in running for the North Carolina House as a Democrat, what
17 should they do, what I would love to be able to tell them is
18 that's great. No time like the present to get started. If
19 you're taking on an incumbent Republican, you've got to get
20 started right now getting out and meeting your voters, learning
21 more about your district, raising money, doing everything --
22 knocking on doors, do everything it takes to succeed.

23 Right now, though, I have to tell them don't go out and
24 meet your voters. Don't let the people you seek to represent
25 know that you're running at all. Lie low until you know what

1 the districts are, which sounds strange, but our biggest fear
2 is that we've got a great candidate who can win a seat, who
3 would actually be a great legislator, and the minute they
4 announce that they're running, if the Republicans drawing the
5 district perceive that candidate as a threat, just with a swipe
6 of a pen or the click of a keyboard, they can draw that great
7 candidate, who's a threat, into a noncompetitive district where
8 they'll never win.

9 Q So is it fair to say, Representative Martin, that at this
10 point, in the absence of districts, you are unable to perform
11 your duties as chair of the campaign caucus committee?

12 A I am. I'm spinning my wheels.

13 Q And the Democratic Party is unable to identify candidates
14 to run for these offices?

15 A We cannot identify candidates, and candidates can't step
16 up to run.

17 Q And they can't begin contacting voters?

18 A No, it would be a bad move.

19 Q And they can't begin contacting -- raising money?

20 A No, they can't.

21 Q So your party is at a distinct disadvantage because of the
22 absence of districts?

23 A Yeah, absolutely. We can't do anything.

24 Q Now, Representative Martin, back in 2003, the General
25 Assembly enacted a statute that says, in effect, in the event a

1 Court says a redistricting plan is invalid, the General
2 Assembly needs two weeks to draw districts.

3 In your experience, is that adequate time for the General
4 Assembly to draw districts -- remedial districts?

5 A Yes, it is. It is adequate time to draw the districts.

6 Q And have you had recent experience in that regard?

7 A I certainly have, yes.

8 Q And is it accurate that this past -- in February of 2016,
9 in a period of two weeks, the General Assembly drew remedial
10 congressional districts?

11 A We did, yes.

12 Q Now, Representative Martin, let me just turn very briefly
13 to the question of special elections.

14 The Legislative Defendants here have suggested in some of
15 their briefs that cutting short the existing terms of members
16 of the General Assembly would disrupt the legislative process.

17 In your experience, is that accurate?

18 A No, I don't think so at all. We have proven the ability
19 in the General Assembly -- first of all, every two years, we
20 adapt to an influx in the normal course of things of new
21 members, and we're able every two years to elect new
22 leadership, form a new committee structure almost from scratch,
23 and go about our business there.

24 Also, as long as I've been in the General Assembly, we've
25 had the normal turnover of new members coming in, either

1 through resignations or through deaths of members, and we have
2 no problem moving those new members into our existing
3 structure.

4 Also, I think it's particularly inaccurate to say that it
5 would be a disruption, coming up as we are in our legislative
6 short session. We work on a two-year cycle. The first year of
7 that cycle is the long session where we come in and prepare the
8 budget for a two-year period.

9 Q And you've just completed that part?

10 A Yes, we have.

11 And then in our short session, we come in, ideally just
12 for two or three months, and just make tweaks and adjustments
13 to the two-year budget that we had previously passed. So there
14 is a much narrower scope of work to be done by the General
15 Assembly in the upcoming short session.

16 **MR. SPEAS:** Thank you, Representative Martin.

17 **JUDGE EAGLES:** Questions by the State --

18 **MR. STRACH:** Yes, Your Honor.

19 **JUDGE EAGLES:** -- by the Defendants.

20 **MR. STRACH:** Phil Strach for the Legislative
21 Defendants.

22 CROSS-EXAMINATION

23 **BY MR. STRACH**

24 Q Representative Martin, good to see you. I'm Phil Strach.
25 I just have a few questions for you based on the examination

1 from Mr. Speas, if I may.

2 Representative Martin, you mentioned that you are, I think
3 you said, the Democratic Conference Chair?

4 A Yes.

5 Q Is it fair to say that that is a political role that you
6 serve for your caucus?

7 A It's involved in recruiting political candidates and
8 assisting in political races.

9 Q Would agree with me that recruiting candidates is a
10 political role that you play?

11 A Yes.

12 Q It's unrelated to any of the policy work that you do as a
13 legislator in the General Assembly; isn't that correct?

14 A It's -- in this job or in elective office, it's often
15 impossible to completely detach policy from politics, but the
16 focus is on electing candidates, getting Democratic candidates
17 elected.

18 Q Would you ever let your political role overshadow your
19 policy role in the legislature?

20 A I'm not sure what you mean by "overshadow."

21 Q Would you ever allow your political role to dictate what
22 kind of policy you propose in the General Assembly?

23 A No.

24 Q Okay. You mentioned -- you talked a little bit about the
25 two-week time period. Representative Martin, did you chair the

1 House Redistricting Committee at some point in the prior
2 decade?

3 A I chaired, I believe it was in 2009, the Pender-New
4 Hanover Redistricting Committee.

5 Q And what was the purpose of that committee's work?

6 A The Courts had overturned -- had found a problem with
7 North Carolina House districts in Pender -- with two districts
8 in Pender and New Hanover Counties, and so they ordered us to
9 redraw those two districts. There were three districts in
10 those two counties. So the third one was redrawn as a part of
11 that, and I chaired the committee that did that.

12 Q And tell me a little bit about the process that you
13 followed in redrawing those districts.

14 A Right. My recollection is a committee was appointed by
15 House leadership, and I was appointed to chair it. We held a
16 public hearing and -- which was advertised and noticed. We
17 had, I believe, at least two meetings of the Pender-New Hanover
18 Redistricting Committee. At least at the latter of those
19 meetings, maps were presented -- or, rather, I presented maps
20 to the committee. The committee discussed them, and the
21 committee adopted those maps, and then it went on to the body
22 as a whole.

23 Q Did you provide any time for the public to comment on the
24 maps that you proposed?

25 A Yes, we did have a public hearing.

1 Q And isn't it fair to say that that entire process from
2 start to finish took longer than two weeks?

3 A I don't know that for sure. From the time the committee I
4 believe had its first meeting, the public hearing was later
5 that week. I'm not sure of the date at which the second
6 meeting was at which -- or the next meeting at which we adopted
7 the maps.

8 Q Did you start drawing any proposed maps before the first
9 public hearing?

10 A We did use the software to become familiar with the
11 geography and, for lack of a better term, to play around with
12 potential scenarios. At some point before the meeting where we
13 actually unveiled the maps to the committee, we, of course, had
14 them finalized. I don't remember when that time was.

15 Q So in your experience, it's not unusual, as you say, to
16 play around with the software and with districts when you're
17 trying to come up with a district to propose in a
18 redistricting?

19 A It's not unusual to play around with them. As I recall at
20 the committee, a Republican member asked me if we had had maps
21 drawn, and he and I sat down after that meeting and talked
22 through what maps -- what -- some of the things we were playing
23 around with. So we did bring in folks from the other party.

24 Q And just to be clear, as I recall, you stated only two
25 districts were at issue in this redistricting?

1 A That's correct. Only two districts had been ruled
2 illegal. A third district was in Pender-New Hanover County
3 that hadn't been ruled illegal, but because of its geographic
4 proximity of the two illegal districts, it was drawn up in the
5 redrawing.

6 Q All right. In your capacity as chair of the Democratic
7 Conference for the House -- are you the chair of the Conference
8 just for the House or for the House and Senate?

9 A Just for the House.

10 Q You've known that a redistricting process would have to
11 take place at least since August of 2016 when this Court ruled;
12 correct?

13 A Yes.

14 Q Since that time, have you drawn any proposed House maps,
15 remedial maps?

16 A I have not.

17 Q Do you know if the Democratic Conference of the House has
18 drawn any maps?

19 A To my knowledge, they have not.

20 Q Do you know if the Democratic Conference has retained any
21 experts or consultants to help them analyze racially polarized
22 voting in connection with that process?

23 A To my knowledge, we haven't.

24 **MR. STRACH:** That's all I have, Your Honor.

25 **JUDGE EAGLES:** All right. Thank you. Any redirect?

1 **MR. SPEAS:** One question, Your Honor.

2 REDIRECT EXAMINATION

3 **BY MR. SPEAS**

4 Q Representative Martin, you participated in the 2011
5 redistricting process?

6 A Yes.

7 Q Did the Republican majority pay any attention whatsoever
8 to the maps you drafted?

9 A They did not.

10 **MR. SPEAS:** Thank you.

11 **JUDGE EAGLES:** All right. Thank you. You can step
12 down.

13 (At 10:20 a.m., witness excused.)

14 **JUDGE EAGLES:** You can call your next witness or
15 proceed.

16 **MS. EARLS:** Thank you. Your Honor, the Plaintiffs
17 call Milo Pyne.

18 **MILO PYNE, PLAINTIFF'S WITNESS**, being first duly sworn, at
19 10:21 a.m., testified as follows:

20 DIRECT EXAMINATION

21 **BY MS. EARLS**

22 Q Please state your full name for the record.

23 A Milo Pyne.

24 Q And where do you live?

25 A 806 Vickers Avenue in Durham, North Carolina.

1 Q And how long have you lived in Durham?

2 A I was born in Durham, and I've lived there continuously
3 since 1996.

4 Q And, overall, how long have you lived in Durham?

5 A Around two-thirds of my life, which is around 42 years,
6 I'd say.

7 Q And you are a Plaintiff in this case; correct?

8 A Yes, ma'am.

9 Q And how are you employed?

10 A I work as a botanist and ecologist for a science
11 conservation group, a private not-for-profit called
12 NatureServe.

13 Q Now, turning to your political involvement, when did you
14 first become involved in political activities?

15 A Well, I assisted in the campaign of President Lyndon B.
16 Johnson in 1964 as a campaign volunteer, and then I became
17 president of the Durham Teen Democrats in 1965, so it goes back
18 a while.

19 Q And have you pretty much been engaged in volunteer
20 political activities since then?

21 A Well, more so consistently since I moved back to Durham in
22 1996.

23 Q Are you currently involved with the North Carolina
24 Democratic Party?

25 A Yes, ma'am, I'm currently a member of the State Executive

1 Committee.

2 Q And what does the State Executive Committee do?

3 A We manage the affairs of the party between the state
4 conventions. So that would include filling vacancies in party
5 offices and working on strategy and issues for the party,
6 determining the party rules, for example.

7 Q Through that volunteer activity, do you come in contact
8 with members of the North Carolina Democratic Party from around
9 the state?

10 A Yes, I do.

11 Q And are you generally aware of the issues that members of
12 the party face relating to recruiting candidates to run for
13 state legislative office and fundraising for those campaigns?

14 A Yes. There's continual discussion of those matters, and I
15 am aware of the activities of the House and Senate Democratic
16 Caucuses in those efforts as well.

17 Q Are you involved in any civic organizations?

18 A Yes, I'm a board member of the Eno River Association,
19 which is a land conservation organization in Durham, and I'm
20 also a member of the Durham People's Alliance and one of the
21 coordinators of its Political Action Committee.

22 Q Now, what is the Durham People's Alliance?

23 A We are a community organization in Durham. We've been in
24 existence for over 40 years. We work on -- we have a
25 progressive political point of view and work on committee

1 issues like fair housing and income equality and voting rights.

2 Q What does the Political Action Committee of the Durham
3 People's Alliance do?

4 A We evaluate candidates for public office for any offices
5 that are voted on by the citizens of Durham County. We
6 evaluate candidates. We offer them the opportunity to fill out
7 questionnaires on the issues of the day, and our members then
8 decide on an endorsement in those contests.

9 Q Now, as a Plaintiff, you're aware that Durham County is
10 one county where both the House and Senate districts must be
11 redrawn?

12 A Yes, that's correct.

13 Q And do you remember what counties Durham is clustered with
14 in the current Senate map?

15 A As far as the Senate is concerned, it goes from Caswell to
16 Person and Granville and then down to Durham, four counties.

17 Q If you could take a look at the exhibit there that's from
18 the record in this case, Map 3, a comparison of the enacted to
19 optimum Senate county groups, what counties is Durham clustered
20 with in that map?

21 A Well, in that map, it is just Durham, Person, And
22 Granville.

23 Q So how does the change in the cluster for Durham County
24 for the Senate districts and the change in the districts within
25 that cluster impact your activities that you described relating

1 to candidate recruitment either for the Democratic Party or
2 through the Durham People's Alliance?

3 A Well, at the moment, both of the senators from that
4 current district, which is 22, both of those senators reside in
5 Durham County. So in the new configuration, that might not be
6 the case. Those senators both might wind up in the same
7 district. So that complicates efforts to elect Democrats
8 there. We would have to figure out if those two senators were
9 going to run against each other. We've endorsed both of them.
10 So then we would have an awkward decision in terms of whom to
11 endorse.

12 And then, again, in that scenario, then we would have to
13 work with people -- with candidates from Person or Granville to
14 figure out who most closely aligned with our principles in
15 order to make an endorsement in that contest if that second
16 district involved any part of Durham County.

17 Q Now, let's turn to the House side. Do you know what
18 counties Durham is clustered with in the current House
19 districts?

20 A Right now, there are four representatives whose districts
21 contain parts of Durham County. Three of them reside in
22 Durham. The other one resides in Orange. So the cluster would
23 be Durham and Orange at this point.

24 Q Can you see Map 6 there that's an exhibit in the record in
25 this case, the comparison of 2011 enacted to optimum House

1 county groups?

2 A Yes, ma'am, I can see it just fine.

3 Q And what counties is Durham clustered with in this
4 configuration for the House?

5 A Durham is clustered with Chatham rather than Orange.

6 Q And how does the change in clusters for House districts
7 impact your work relating to candidate recruitment and
8 endorsement?

9 A Well, again, it would complicate things because there
10 would obviously be people from Chatham running in a district
11 that might include part of Durham. I mean, you could go
12 various ways. You could wind up with -- I guess, depending on
13 the population, that fourth district could be entirely within
14 Chatham; in which case, we wouldn't have any concern with it.
15 If it involved part of, say, South Durham, then we would need
16 to evaluate candidates from Chatham.

17 Now, a number of years ago, there was a Senate district
18 that involved Durham and Chatham.

19 Q So we talked about the Durham clusters and the Durham
20 districts. Based on your work on the State Executive
21 Committee, can you tell us how the uncertainty about the
22 districts impacts candidate recruitment in other affected areas
23 of the state?

24 A Well, it makes it difficult for a number of reasons. I
25 think there is a scenario down there in Hoke and Cumberland

1 with the Senate where it's complicated, and obviously with a
2 racially gerrymandered district, then you have a very
3 particular kind of configuration. If it were no longer
4 racially gerrymandered, then you'd have different issues with
5 constituents and different issues with finding, you know,
6 credible and important candidates than in the two different
7 districts.

8 Q So how does the uncertainty about the districts impact
9 fundraising?

10 A Well, it creates enormous uncertainty because at this
11 stage in the cycle, candidates would be coming forward. They
12 would be thinking about running. They would know what the
13 districts were. They would know who their constituents were
14 going to be, and they could be knocking on doors and raising
15 money and communicating with the parties and other endorsing
16 groups.

17 Similarly, the parties and other endorsing groups would be
18 trying to evaluate who was available to run in those districts.
19 So it makes it just impossible for an individual candidate to
20 be able assess the lay of the land and plan their campaign and
21 conduct fundraising.

22 Q So you're saying normally candidate identification and
23 fundraising for the November 2018 elections would already be
24 underway now?

25 A Yes, it would. Particularly, in Durham, we have two

1 members of our current House delegation who are recently
2 appointed. So they are in a new process of trying to assess
3 their probabilities of being reelected. So it creates
4 tremendous uncertainty for them because they could easily be
5 combined into the same district.

6 Q Can you give any specific examples of how the uncertainty
7 about the state legislative districts has impacted fundraising?

8 A Well, I had an opportunity to attend the fundraiser for
9 the House Democratic Caucus a couple of weeks ago, and part of
10 the discussion there was about this very uncertainty. The
11 people I got -- donors were -- donors seemed unwilling to
12 commit additional funds until these issues were better
13 resolved.

14 Q Now, does it really make a difference to your activities
15 whether you know the district lines in August of 2017 or not
16 until November of 2017?

17 A From the Democratic Party perspective, yes, it does. Less
18 so from the People's Alliance perspective, but I think clearly
19 with critical issues involving the legislature and governance
20 in the state right now, the party is very anxious to be able to
21 start making those decisions.

22 **JUDGE SCHROEDER:** Are you talking about for the 2018
23 election cycle?

24 **THE WITNESS:** That's correct.

1 **BY MS. EARLS**

2 Q That's correct. Whether or not there are special
3 elections, just on the question of when do we know what the
4 districts will be?

5 A Yes, that's correct.

6 Q Now, to your knowledge, are there candidates for other
7 offices that will be on the ballot in November 2018 who are
8 already doing fundraising, getting their message out,
9 announcing they're running?

10 A Well, again, that's the whole problem. They would be and
11 should be, but they're unable to do so.

12 Q Well, I mean, I'm sorry, for other -- offices other than
13 state legislature, whether congress --

14 A Well, yes, certainly --

15 Q -- anything that's on the ballot --

16 A -- people --

17 **THE COURT REPORTER:** I'm sorry.

18 **THE WITNESS:** Oh, I'm sorry.

19 **BY MS. EARLS**

20 Q Let me finish my question so she can get it down.

21 So my question is, to your knowledge, are there candidates
22 for other offices like Congress, county commission, school
23 board, any other offices that are on the ballot in 2018? Have
24 candidates already announced and begun fundraising?

25 A I think all that we have in 2018 would be U.S. Congress.

1 I don't think there's other -- in Durham there are not school
2 board -- well, no, I take it back because we've got things like
3 clerk of court and sheriff. Yes, so, obviously, yes, I know
4 that people for those offices where the districts aren't an
5 issue, they're entirely within Durham County, candidates are
6 definitely planning their campaigns and doing fundraising for
7 sheriff, for example.

8 Q And what impact does it have on your efforts if the
9 Republican Party is not in the dark about what the remedial
10 districts are while you don't know what they are?

11 A Well, I think it's entirely obvious that assuming that the
12 Republican Party has been able to draw some preliminary
13 districts, that they are already assessing the candidates who
14 would be available, assessing the chances of the incumbents in
15 those newly drawn districts and already doing their
16 strategizing and fundraising, and the Democratic Party is
17 completely unable to conduct those activities, yes.

18 **MS. EARLS:** I have no further questions. Thank you.

19 **MR. STRACH:** Thank you, Your Honor. The Legislative
20 Defendants have no questions.

21 **MR. PETERS:** Nor do we, Your Honor.

22 **JUDGE EAGLES:** All right. Thank you. Now you can
23 step down.

24 (At 10:32 a.m., witness excused.)

25 **JUDGE EAGLES:** You can call your next witness.

1 **MS. EARLS:** Your Honors, we'd like to turn now to
2 evidence relating to the question of whether there should be
3 special elections, and the Plaintiffs call George Gilbert.

4 **GEORGE N. GILBERT**, PLAINTIFFS' WITNESS, being first duly
5 affirmed, at 10:33 a.m., testified as follows:

DIRECT EXAMINATION

7 BY MS. EARLS

8 Q Will you please state your full name for the record.

9 A George Nixon Gilbert.

10 Q And where do you reside?

11 A Currently residing at 1601 Bellevue Road in Salisbury,
12 North Carolina.

13 Q Now, did you previously live in Greensboro?

14 A Yes. And I still have a home in Greensboro at 4018 Hicone
15 Road, which will be my permanent residence as soon as my wife
16 retires.

17 Q And you are retired now; correct?

18 A Correct.

19 Q When did you retire?

20 A I retired in February of 2013.

21 Q And prior to retiring, how were you employed?

22 A I was the director of elections for Guilford County for 25
23 years.

24 Q When did you start in that role?

25 A I started in February of 1988.

1 Q Thank you. Generally, what were your responsibilities as
2 director of elections?

3 A I was responsible for anything related to elections.
4 Basically, we conduct all elections. We conduct all voter
5 registration within the county. We do all of the candidate
6 filing. We do all of the ballot setup, voting machine testing,
7 do all of the -- we actually conduct the election. We do all
8 of the training of precinct officials, locate all of the
9 polling places. If it had to do with elections in Guilford
10 County, it was my responsibility and that of my staff.

11 Q And how large was your staff?

12 A We had about -- about 15 to 17 of us.

13 Q In addition -- during the time that you were serving as
14 director of elections, did you participate in any other
15 professional organizations relating to election administration?

16 A Well, yes, we had a state association in which we actively
17 engaged in communications with each other and met quarterly at
18 the district level. We also -- I also was very active in the
19 Election Center's National Association of Election Officials
20 and served as the chair of the legislative committee of that
21 national association for the last six years of my service.

22 Q And what did the legislative committee of the national
23 association do?

24 A We were primarily responsible for determining the needs
25 and concerns of election officials across the country related

1 to legislation that was being considered by the U.S. Congress.

2 Q And am I correct you've testified before Congress on
3 several occasions?

4 A Yes, three, four, or five times, yes.

5 Q Now, Guilford County is an urban county with over 160
6 precincts; is that right?

7 A That's correct.

8 Q Do you have any basis from your experience for knowing the
9 practices that might be followed in other counties, whether
10 they are large counties or small counties?

11 A Yes. As I mentioned, we met quarterly at the district
12 level among the directors of elections, and many of the
13 counties surrounding Guilford County are smaller counties in
14 our district; and we had extensive conversations on a regular
15 basis regarding the problems and the challenges that we all
16 faced, and at the state level, we met, generally had training
17 sessions at least once and possibly twice a year. We spent a
18 lot of time together. We spent a lot of time discussing common
19 problems and unique problems of counties of different sizes and
20 different configurations.

21 Q Now, turning to the question of a special election, what
22 are the key tasks that would need to be done to prepare to
23 conduct a special election in newly drawn legislative
24 districts?

25 A The first thing, obviously, would be to change the

1 districts in the voter registration system. That would be
2 using the geocoding system. Simultaneously with that, we
3 would -- the first thing we would want to do is to notify all
4 of our polling places and our precinct officials and any early
5 voting sites of what the new dates were and when we were going
6 to need those facilities.

7 Next comes filing of candidates. Next comes -- after
8 the candidates have filed and that period is closed, you lay
9 out the ballot or set up the ballot database and define the
10 ballots. Then you do all of your testing, generate, you know,
11 samples of what the ballot is and do all of your logic and
12 accuracy testing. Following that, you have to burn all of your
13 media and make sure that all the voting equipment is operating
14 properly, and then you have to deploy everything and execute
15 the election.

16 Q Now, talking for a minute about the very first step you
17 described, geocoding, can you tell us a little bit more about
18 what that involves?

19 A Well, each -- the geocode filing has all of the addresses
20 in Guilford County, and you assign the districts to each of
21 those address ranges. Generally, it's an address range on a
22 street. All of the streets are grouped by precinct. So if you
23 have to change the districts for one precinct, then all the
24 streets within that precinct you can do in one command.

25 Q One command as in one --

1 A Just say, okay, change all of these from District 2 to
2 District 3.

3 **JUDGE EAGLES:** Can I ask you what that means? You're
4 saying if precincts are not split, the geocoding process is
5 simpler?

6 **THE WITNESS:** That's correct.

7 **JUDGE EAGLES:** Okay. Go ahead.

8 **THE WITNESS:** So you just assign whole precincts, and
9 the process runs very quickly if you've got whole precincts
10 assigned to districts.

11 **BY MS. EARLS**

12 Q And how does the process differ from when the precincts
13 are split?

14 A Well, then you have to assign -- generally, now, today, we
15 assign by census block, and so you would have to have the shape
16 files and be able to identify the census blocks that are
17 involved in the splits within that district, and then you would
18 assign those streets by census block, which basically involves,
19 you know, sitting down at a computer and click, click, click,
20 click, click, and then you generate a list of those streets.

21 Q And if you're doing the geocoding for just one office or
22 two, the House districts and the Senate districts, is that
23 process going to be faster than what you typically do after a
24 census when you're also reassigning for county commission
25 districts and possibly school board districts, city council

1 districts, all of the districts that have changed after the
2 census?

3 A Well, certainly, it's much simpler to just do one or two
4 districts than it is to do all of the districts we deal with.

5 Q Now, is it possible to have the filing period for
6 candidates open before the geocoding of all voters is
7 completed?

8 A Well, yes, it's possible. We like to be able to check the
9 registration record of the candidates against the district
10 assignment in the computer, but it's not required. You can
11 look at the map or you can look at the -- if we know from the
12 legislation that executed the redistricting that this precinct
13 is in District 1, then we know that that representative or that
14 candidate is in District 1. So we can go ahead and get started
15 as soon as the bill is passed that sets the new districts.

16 Q Now, is it also possible to do the geocoding while an
17 election is underway?

18 A A separate election, let's say?

19 Q Yes, a separate election.

20 A Well, yes, because when you do the geocoding, you create a
21 clone of the geocode file, make a copy of it, and you do all
22 the changes in that copy; and then when you're finished with
23 the other election and you're ready to start the new one, you
24 can load the entire geocode file to replace the old one, and
25 you're ready to go.

1 Q So, in fact, if the legislature were to pass new
2 redistricting maps by August 11, would it be possible for the
3 local boards of elections in the affected counties to begin the
4 geocoding process at that time?

5 A Yes, it would.

6 Q Now, I want to turn just for a minute to the -- a few
7 details about ballot preparation. Is that faster with a
8 shorter ballot?

9 A Oh, yes.

10 Q And how long would it take if there are only two contests
11 on the ballot, a House and a Senate seat?

12 A Well, I have set up two or three contests ballots
13 following a primary. Like I say, I have a municipal primary
14 and I've got a municipal election in four weeks, and I have set
15 up those ballots within a couple of days after the primary. So
16 it doesn't take very long with a short ballot. You can do it
17 in a day. You know, for one county, you can do it in a few
18 hours.

19 Q Then turning to some of the other tasks you talked about,
20 is it possible to start the absentee balloting process while
21 the burning media and logic and accuracy testing is still going
22 on?

23 A Well, yes. Now, you have to generate the absentee
24 ballots, and typically those ballots are tabulated using a
25 central tabulator. So you would burn the media for the central

1 tabulator, do all the testing for the central tabulation
2 system, and then you can start the process of mailing out the
3 absentee ballots. All of your precinct equipment or any other
4 equipment that you're going to use in the election through
5 early voting, you can then do the media generation and testing
6 of that equipment later after the absentee voting is already
7 underway.

8 Q And turning to the question of the absentee balloting
9 period, would a 45-day absentee balloting period create
10 problems for military and overseas citizen voters?

11 A Much less so than it would have in the past because we
12 have electronic communications now authorized in North Carolina
13 between absentee and military voters. So they can request
14 their ballots electronically and receive their ballots
15 electronically and, even in an emergency case, return those
16 ballots electronically.

17 Q Now, if the remedial districts were finally approved by
18 the Court on or before September 8, 2017, would it be possible
19 to conduct primaries in the impacted areas on Tuesday,
20 December 5?

21 A That's roughly a three-month period. Certainly, that
22 would be no problem. We do elections with four-week turnaround
23 periods commonly.

24 Q And then if there were a primary on Tuesday, December 5,
25 would it be possible to have a general election for those seats

1 13 weeks later on March 6, 2018?

2 A That would be ample time.

3 Q And in your experience, is 13 weeks between the time that
4 new districts are established and a primary is conducted -- is
5 that necessary, to have the 13 weeks before the primary?

6 A Well, we certainly had to do it in a shorter period of
7 time before. I mean, as an election administrator, you always
8 want to have more time, and you always want to have certainty,
9 but you always have to do things without all of those benefits
10 sometimes. So, yeah, we've conducted such elections in shorter
11 periods of time before, and I feel confident that they could
12 continue to do so.

13 Q Now, do you remember there being a shorter time frame in
14 legislative elections in the past?

15 A Yes, in the late '90s, we had a congressional runoff or a
16 congressional primary that resulted -- it was held separately
17 as a result of redistricting, and throughout the early 2000s,
18 there were -- I can't remember all the different redistricting
19 that went on throughout that first decade of this century, but
20 it was more than one or two occasions in which we had to make
21 those changes, conduct special elections, reschedule elections,
22 and things like that.

23 Q Now, you talked about the early 2000s. Those were state
24 legislative districts that were being changed; is that correct?

25 A I believe at least the state legislative districts were

1 being changed and possibly congressional as well.

2 Q And is there anything different about elections in 2017
3 that would prevent a similar schedule today?

4 A Nothing that I am aware of, no. We have better technology
5 than we had then. So some of the processes can go faster, but
6 most of them, I think, are still being conducted pretty closely
7 to the same process.

8 Q And can you tell us how burdensome this would be on the
9 county's budget to have a special -- a primary and a special
10 general election?

11 A Well, at the local level, you always feel that it's
12 burdensome, and if it costs a half million dollars to run a
13 primary and general election special, that's considered a huge
14 burden; but in my 25 years as director of elections in Guilford
15 County where we had a well-funded Board of Elections, my budget
16 never proceeded one half of 1 percent of the county's total
17 budget. I think we have to place that in perspective.

18 **MS. EARLS:** Those are all my questions.

19 **JUDGE EAGLES:** Questions for any of the State
20 Defendants?

21 **MR. STRACH:** Yes, Your Honor.

22 CROSS-EXAMINATION

23 **BY MR. STRACH**

24 Q Mr. Gilbert, good morning.

25 A Good morning.

1 Q My name is Phil Strach. I represent the Legislative
2 Defendants. I have just a few questions for you.

3 Are you aware of the name of the statewide election
4 information database?

5 A SEIMS.

6 Q And that's S-E-I-M-S?

7 A Yes.

8 Q Do you recall what year SEIMS came online?

9 A First decade of this century. I know Guilford County was
10 one of the last counties to adopt SEIMS. It was done over a
11 period of several years during that decade.

12 Q Does 2006, 2007 sound right to you?

13 A That sounds pretty close to about right.

14 Q Until you retired in 2013, were there periodic updates
15 that were made to SEIMS?

16 A Yes, there were.

17 Q And it's true then that any updates to SEIMS since 2013
18 you would not be aware of; is that correct?

19 A By and large, I am not aware of the details, no.

20 Q All right. If there were any updates to SEIMS that would
21 affect the ability to perform the election functions that
22 you've testified about today, you would have to defer to
23 current election officials on those matters, wouldn't you?

24 A Yes, I would.

25 Q In your experience for a countywide election, was it

1 generally difficult to find early voting locations?

2 A Not exceptionally difficult, no.

3 Q Were you always able to find enough poll workers?

4 A Yes.

5 Q Isn't recruiting poll workers a constant process?

6 A It goes on constantly, yes.

7 Q Did you ever have to run a municipal election at the same
8 time that you were running a legislative election?

9 A No, we did not.

10 Q Don't you agree that if you had to do that, it would be
11 twice as hard to find additional early voting locations?

12 A Well, I don't believe we would be conducting early voting
13 at the same time for two different elections.

14 Q Okay. But would you agree with me that if you had to run
15 two separate elections, municipals and then potentially
16 overlapping legislative elections, that it would make the job
17 of recruiting poll workers more difficult?

18 A Yeah, the poll workers don't mind working the regular
19 elections that they're scheduled for, but sometimes they hate
20 being called on for extra elections, but we have always found
21 the poll workers that were required to serve.

22 Q All right. Have you ever had to run five countywide
23 elections within a 12-month period in your experience?

24 A Yes, I did the first year I was director of elections.

25 Q And what year was that?

1 A 1988.

2 Q All right. And did you ever have to do that since then?

3 A No, I don't think we ever had five. I think we ended up
4 with maybe three or four at several times.

5 Q All right. You've testified a little bit about geocoding.

6 A Yes.

7 Q And you mentioned something about a clone file?

8 A Right.

9 Q You said that's the file that you could geocode in
10 separate and apart from the actual SEIMS system; is that
11 correct?

12 A Well, it's all part of SEIMS. It's just that one of the
13 files is active and the other is inactive --

14 Q All right.

15 A -- until you make it the active geocode file.

16 Q All right. And would you agree with me that you couldn't
17 take the clone file and make it active until any active voting
18 was over?

19 A That's correct.

20 **MR. STRACH:** That's all the questions that we have,
21 Your Honor.

22 **JUDGE EAGLES:** Redirect?

23 **MR. PETERS:** Your Honor, I did have one.

24 **JUDGE EAGLES:** Oh, I'm so sorry. I apologize.

25 **MR. PETERS:** That's all quite all right.

CROSS-EXAMINATION

BY MR. PETERS

3 Q Good morning, Mr. Gilbert. I'm Alec Peters from the
4 Attorney General's Office. I think we've met in the past.

5 You testified just now about your experience finding
6 workers and polling places in Guilford County; correct?

7 A Yes.

8 Q Are you familiar with what challenges anyone in the other
9 99 counties might face in that regard if they were to have five
10 elections in one year?

11 A Well, I think they have a very common experience. A lot
12 of jurisdictions have to work very hard, and they work year
13 around finding -- making sure that they've got all the adequate
14 polling places that meet all of the requirements and making
15 sure that they have qualified election officials.

16 Q But do you know what challenges people in other counties
17 might face?

18 A They face the same ones that we face here in Guilford
19 County.

20 Q Well, would you agree that not all counties in North
21 Carolina are equally situated in terms of population, in terms
22 of resources, and the like?

23 A Definitely. And it helps to have staff that's available
24 to do those things, and some counties don't have that. Then
25 they have a smaller number of election officials that they have

1 to locate.

2 Q And they might have also smaller budgets; is that true?

3 A They would have smaller budgets, yes.

4 **MR. PETERS:** I don't have anything further, Your
5 Honor.

6 **MS. EARLS:** No redirect at this time, Your Honor, but
7 we would reserve the right to call Mr. Gilbert in rebuttal.

8 **JUDGE EAGLES:** All right. Thank you. You can step
9 down.

10 (At 10:54 a.m., witness excused.)

11 **JUDGE EAGLES:** You can proceed for the Plaintiff.

12 **MS. EARLS:** Your Honor, we have no further witnesses
13 for the Plaintiffs.

14 **JUDGE EAGLES:** I don't believe I saw any witness
15 disclosures from the Defendants; right?

16 **MR. PETERS:** Your Honor, we did have one.

17 **JUDGE EAGLES:** I'm sorry. I overlooked that.

18 **MR. PETERS:** That's quite all right.

19 **JUDGE EAGLES:** Okay. Well, maybe it will be best to
20 go ahead and call your witness now before we start any
21 arguments.

22 **MR. PETERS:** That's fine, Your Honor. The State and
23 State Board Defendants would call Kim Strach.

24 **KIM W. STRACH, DEFENDANTS' WITNESS,** being first duly sworn, at
25 10:54 a.m., testified as follows:

1 DIRECT EXAMINATION

2 BY MR. PETERS

3 Q Can you please state your name for the record.

4 A Kim Westbrook Strach.

5 Q And, Ms. Strach, what is your occupation?

6 A I am the executive director of the State Board of
7 Elections and Ethics Enforcement.8 Q And could you describe just a little bit for the Court
9 your background in that role, how long you've been working with
10 the State Board, and the like?11 A Yes, sir. I came to the State Board of Elections in 2000.
12 I came as an elections investigator. In 2001, late 2001, I
13 became the deputy director of the State Board of Elections for
14 the Campaign Finance Division, and I served in that capacity
15 until 2013 when I was appointed to the executive director
16 position.17 Q And, briefly, could you describe what your duties as
18 executive director include?19 A It is oversight of elections and campaign finance
20 compliance. I'm presently ethics enforcement for the state,
21 including the 100 county boards of elections and their
22 administration of elections, and ensuring that all things
23 within Chapter 163 are complied with.24 Q And, Ms. Strach, have you provided any declarations in
25 this litigation?

1 A Yes, I have.

2 **MR. PETERS:** I have a copy of the most recent one.
3 We have not marked it as an exhibit since it's already been
4 filed with the Court, but if I could just hand it to her so
5 we're all on the same page of what we're talking about.

6 **JUDGE EAGLES:** That's fine. I think we have all
7 looked at it. My notes reflect that it's on the docket at
8 162-1 filed on July 6?

9 **MR. PETERS:** That's correct, Your, Honor. You beat
10 me to it.

11 **BY MR. PETERS**

12 Q Ms. Strach, have you had a chance to look at that?

13 A I have.

14 Q Is this the declaration that you executed on the 13th of
15 June, and it was filed on July 6?

16 A Yes, it is.

17 Q And to the best of your knowledge, has anything changed
18 with regard to the matters you've discussed in that declaration
19 since you executed the declaration?

20 A Yes. One of the things that has changed is when this
21 declaration was done back in June, it was thought that there
22 could be a change to the current municipal schedule because of
23 some statutory conflicts that are in the municipal election
24 schedule for this year, and it was sort of assumed that maybe
25 those would be addressed, and, therefore, the declarations were

1 to take some of -- takes that assumption into account when I
2 made that declaration.

3 Q And so we're clear, when you say the "statutory conflicts"
4 --

5 A Yes.

6 Q -- that the statute -- that are presented for the
7 municipal elections this year, could you describe what you mean
8 by that?

9 A Yes, I could. Currently for 2017 -- or it's when all
10 municipal elections take place or most municipal elections take
11 place in odd number of years, there are four different types of
12 municipal elections. There are partisan municipal elections,
13 there are nonpartisan elections, which can either have a
14 primary or they can be plurality, and then there are also some
15 municipalities that conduct what we call elections with
16 runoffs. Those four types of elections are held on three
17 different election days during the municipal year. That's in
18 September for partisan. If the partisan can go to second
19 primary, that would be held in October, along with any
20 nonpartisan primaries or those that do elections with runoff.
21 Finally, in November are any elections or election runoffs and
22 then the elections for the nonpartisan primaries.

23 So the schedule has always been very tight for municipal
24 elections with very little time between these, and not all
25 counties have all three types of elections, but a county like

1 Mecklenburg County, the City of Charlotte, potentially could be
2 in all three of those elections.

3 The schedule has in the past -- in 2015, there were 10
4 days of early voting instead of 17 days of early voting. Then
5 there were 7 days of canvass in previous years to that rather
6 than 10 days of canvass. Now we have 10 days of canvass, and
7 we have 17 days of early voting, and that -- what that causes
8 is that the -- by the time that the September election or
9 primaries are certified -- early voting for the October
10 election is required to have started the day before that
11 certification, and this also happens again in October, when the
12 October election by statute should be certified, 10 days after
13 by the county board. Early voting for November would have
14 started the day prior to that. So you would have to know the
15 candidates that were certified in order for you to start early
16 voting for the next election.

17 Q And you referred to a bill that was being considered by
18 the General Assembly. Is that House Bill 843?

19 A Yes, it is.

20 Q And if you look at the last page of your declaration,
21 Exhibit B, is that what the calendar would have looked like if
22 HB843 had been enacted by the General Assembly?

23 A Yes, it is.

24 Q With regard to what you testified to in your declaration
25 on a schedule, what are the implications of the fact that there

1 has been no change to the municipal calendar?

2 A Right. So the implication is is that the proposal in
3 House Bill 843 would have eliminated a second primary. So
4 there would have only been two elections. Now we are back to
5 having three elections. So --

6 **JUDGE EAGLES:** I'm sorry. Are you saying House Bill
7 843 did not pass?

8 **THE WITNESS:** Yes, Your Honor.

9 **JUDGE EAGLES:** Okay.

10 **BY MR. PETERS**

11 Q So because House Bill 843 did not pass, the situation is
12 now that there are three municipal election dates in the 2017
13 cycle?

14 A Right. All elections that were going to be held in
15 October would have been held together with those in September,
16 and there would have been a September and November. Now it's
17 September, October, and November.

18 Q And would it be accurate to say that part of the
19 assumption in your declaration was that if there were just two
20 dates for municipal elections, that special elections for the
21 legislature could be timed to coincide with municipal elections
22 that were already happening?

23 A Yes, that was the assumption, that they could have a
24 primary and a general with the general.

25 Q Okay. Now, I believe you were present in the courtroom a

1 little bit earlier when Mr. Gilbert testified about geocoding

2 --

3 A Yes, I was.

4 Q -- and whether or not geocoding can happen when there's
5 actually an election going on.

6 Could you speak to that issue a little bit and your
7 understanding of whether the two can happen at the same time
8 and, if so, how?

9 A I can. I agree with Mr. Gilbert on one part of that, is
10 that if you are going to do -- you can do geocoding outside of
11 the system that's not applied. You could work outside the
12 system in what is called a clone or a copy. That is right, and
13 if a county is able to do that while they are conducting an
14 election and not apply it, then that could be a possibility. A
15 lot of counties, because we have same-day registration, if
16 someone comes in and they are -- they reside at an address that
17 has not been put into the system, it's a new subdivision, what
18 will happen is the county will have to go ahead and work in
19 that very same clone. You can only work in one clone or one
20 copy. So any work that had been done in that clone, you would
21 have to go in and make those changes, and you'd have to apply
22 them. So instead of what Mr. Gilbert was saying, you wait
23 until after voting has occurred, wait until after the election,
24 and then apply the copy and you move on. You would have to
25 then, though, apply that copy so that you could then process

1 those same-day registrations. So that is what would be a
2 problem if you had done any geocode work in that clone if you
3 had to apply that clone.

4 Q I want to make sure I'm understanding this correctly. So
5 are you saying that even if a clone was set up so that
6 geocoding could be done, that if somebody came in to do
7 same-day registration during early voting and they had an
8 address that was a new address for the system, such that it had
9 to be created in the system, that the only way to do that is to
10 go into the same clone, create the address, but you then have
11 to apply the clone before that person's vote can be counted?
12 Am I getting that right?

13 A You have to apply the clone so that that -- the ballot
14 style can be generated for that voter, because that's the
15 purpose of applying the clone is so that that voter can have a
16 ballot style that's generated for them, and they can be
17 processed in the system. So that's why it's necessary to apply
18 the clone.

19 Q So you actually would have to apply the clone before the
20 person can vote?

21 A Well, actually, you'd have to apply -- no, if they were
22 able to get the correct ballot style, if the county was able to
23 just be able to determine what that was, then they could do
24 that, but then after processing it -- same-day registration has
25 to go through the mail verification process within 48 hours.

1 So they would have to be able to process that so that person
2 would have a ballot style and they would be in the system so
3 that they could go through the mail verification process.

4 Q And the result of that would mean that while the geocoding
5 was going on, the clone in which the geocoding is going on
6 would be applied to the main system people are voting in?

7 A That is correct.

8 **JUDGE SCHROEDER:** When you say "clone," are you
9 saying just for that one voter who went through SDR, or are you
10 talking about the whole database?

11 **THE WITNESS:** There is only -- you can only work in
12 one clone for the -- so all work that's being done has to be
13 done in this one clone. So that's any changes you could be
14 making and any other -- the one voter or multiple voters --

15 **JUDGE SCHROEDER:** Is the clone the complete voting
16 database?

17 **THE WITNESS:** It's a copy of it.

18 **JUDGE SCHROEDER:** All right. Thank you.

19 **BY MR. PETERS**

20 Q And is the copy for the county?

21 A Yes, and it's only within the jurisdiction of the county.

22 Q You take the database from the county and make a copy of
23 it to work in?

24 A Yes.

25 Q Have you seen the schedule that the Plaintiffs have

1 proposed in this case for a special election in 2017 --

2 A I have.

3 Q -- or 2018, rather? You have?

4 A Yes, I have.

5 Q Is there anything about that schedule that concerns you in
6 terms of being able to implement it?

7 A Yes. There are -- there are five counties that are --
8 that do not have municipal elections for this year. So for
9 those five counties, they could go ahead, and when they get
10 their maps, they could do geocoding at that time. They could
11 prepare for this primary in December, and I don't think there
12 would be any issues at all for those five counties.

13 Other counties that are conducting municipal elections,
14 there are multiple processes that have to go on, not to mention
15 the scheduling problems that we have currently because we have
16 three. The filing period for the special election proposed in
17 this schedule would start in September. So it would start in
18 September at the time that the September primaries are being
19 conducted. It also goes through a time when the October
20 elections are getting ready to start and begin early voting.

21 So all of these things are happening when you have
22 basically three election events happening. Different events
23 for those elections are happening simultaneously, and
24 understanding that that could be one county that might be
25 involved in all three of those types of elections, having to do

1 that at the same time. So that's certainly one of the major
2 concerns that I would have with that schedule.

3 **JUDGE EAGLES:** How many counties -- or how many
4 municipalities -- how many counties have municipalities which
5 will have three or at least the potential for three elections,
6 September, October, November?

7 **THE WITNESS:** Most counties have elections in
8 November. I would say more than 90 of the counties have
9 elections in November. Those that would have the possibility
10 of three, I am not certain of the exact number, but it's
11 certainly a smaller number because there's only three --
12 actually, there's only two municipalities that have elections
13 in September. That's Charlotte and Murphy. The Cleveland
14 County Board of Education has decided they will have partisan
15 school board elections all in September. So there's three. So
16 those are the only three that have September. I guess there's
17 the only possibility of three having all three, but there are
18 certainly a number that have October and November.

19 **BY MR. PETERS**

20 Q And one of the ones you mentioned that's the possibility
21 of three is Charlotte?

22 A Yes.

23 **MR. PETERS:** I have no further questions, Your Honor.

24 **JUDGE EAGLES:** Questions for the Legislative
25 Defendants?

1 **MR. MCKNIGHT:** Yes, Your Honor.

2 **BY MR. MCKNIGHT**

3 Q Good morning, Ms. Strach. Just a few questions for you.

4 You said that you're the executive director of the
5 bipartisan Board of Elections and Ethics Enforcement; right?

6 A Correct.

7 Q Do you currently have a board?

8 A Currently, we do not.

9 Q And do you know when you will have a board?

10 A I do not know when we will have a board.

11 Q Does not having a board affect what you do?

12 A Certainly. The actual board performs a lot of functions,
13 and certainly in election years, some of the key things that
14 they do is they actually certify elections. For municipal
15 elections that are held in one county and not have crossover,
16 they don't certify those elections, but any municipalities that
17 cross counties would -- the State Board would be required to
18 certify those elections. Additionally, for one-stop plans, if
19 a municipality wanted to have early voting in multiple places
20 other than their Board of Elections or different hours, if they
21 were not unanimous on that decision, it would require the State
22 Board.

23 Q Would not have -- I think you have gone into some of this
24 already, but does not having a board affect the ability of
25 election officials to conduct an election?

1 A Not having a board, no. County boards of elections, they
2 can still conduct an election without a board. The counties
3 have boards that have held over. They are not new boards, but
4 the counties actually conduct the elections, and they
5 certainly -- as long as they have the appropriate quorum
6 requirements, they can meet and perform all the functions that
7 they can with any board.

8 **JUDGE WYNN:** Let me ask a question. You say you do
9 not have a board. What does that mean?

10 **THE WITNESS:** There are currently no members
11 appointed to the State Board of Elections and Ethics
12 Enforcement, and legislation repealed the State Board of
13 Elections and the Ethics Commission. So we are merged as one
14 without an appointed board.

15 **JUDGE EAGLES:** So who has not appointed?

16 **THE WITNESS:** The Governor.

17 **JUDGE WYNN:** So you have no members of the board?
18 Does the board itself exist?

19 **THE WITNESS:** Yes, Your Honor. The board itself
20 exists. The merge of the bipartisan State Board of Elections
21 and Ethics Enforcement exists currently, but there are no --
22 the board -- the Governor has not appointed members to that
23 board yet.

24 **JUDGE WYNN:** I guess I'm trying to understand. If
25 you have a board that exists but there are no members on it,

1 what is the board?

2 **THE WITNESS:** Well, the agency exists.

3 **JUDGE WYNN:** So you are the executive director of the
4 agency?

5 **THE WITNESS:** Of the agency.

6 **JUDGE WYNN:** Not of the board?

7 **THE WITNESS:** Of the board that doesn't exist
8 currently.

9 **JUDGE WYNN:** I see.

10 **JUDGE SCHROEDER:** What is the status? It's in
11 litigation; is that right?

12 **MR. PETERS:** That's correct.

13 **JUDGE SCHROEDER:** You sent us a notice from the
14 Supreme Court. What's the status of that litigation?

15 **MR. STRACH:** Your Honor, may I address that?

16 **JUDGE SCHROEDER:** Yes.

17 **MR. STRACH:** And, obviously, Mr. Peters can also
18 address this. The status, as I know it, is that the litigation
19 is captioned *Cooper v. Berger* and the Governor versus the
20 legislature. The State Board of Elections and Ethics
21 Enforcement is not a party that I am aware of.

22 The lower trial court dismissed the case by the
23 Governor for lack of subject matter jurisdiction, and the Court
24 of Appeals -- the Governor sought a stay from the Court of
25 Appeals, which was denied. The Governor sought sort of a stay

1 from the Supreme Court. The State Supreme Court issued the
2 order that we filed, Your Honor. In that they said that the
3 unimplemented parts of the act creating that board could not go
4 into effect, but the stuff that had gone into effect could.
5 The order also said that they weren't going to require
6 appointments to be made to that board, but they also weren't
7 going to stop anybody from making appointments to the board,
8 and they also said that no party can try to go back to the old
9 State Board of Elections or the State Ethics Commission.

10 The order essentially attempts to freeze everything
11 in place.

12 **JUDGE SCHROEDER:** Is there a schedule for that in the
13 Supreme Court?

14 **MR. STRACH:** There is. There's an oral argument
15 date, Your Honor, scheduled for August 28.

16 **JUDGE SCHROEDER:** Thank you.

17 **JUDGE EAGLES:** Anything to add Mr. Peters?

18 **MR. PETERS:** No, that's all correct, Your Honor.

19 **JUDGE EAGLES:** All right.

20 **MS. EARLS:** Your Honor, if I may add about the status
21 of that litigation? The order that was filed by the Defendants
22 from the State Supreme Court also says that if any party
23 experiences any difficulty in administering elections because
24 of that stay that they are to come back to the Court.

25 **JUDGE EAGLES:** Okay. Everybody is nodding, the

1 record will reflect.

2 All right. Go ahead with your questions.

3 **BY MR. MCKNIGHT**

4 Q One more question, Ms. Strach. If there's a challenge in
5 an election, how is not having a board -- how would that affect
6 the challenge process?

7 A Currently, we were -- yesterday was the deadline for
8 candidate challenges, and we did have candidate challenges that
9 were filed in counties that only have two board members, which,
10 right now, the current law requires three board members. So
11 those challenges by the way the law provides is that if -- the
12 remedy is to go from the county board to the State Board and
13 then to the Court of Appeals. So those are headed to the Court
14 of Appeals.

15 Q In counties with two elections and only two board members,
16 are they able to act with respect to local elections?

17 A The ones with two board members?

18 Q Yes, ma'am.

19 A Currently, not at this time.

20 **MR. MCKNIGHT:** No further questions for Ms. Strach.

21 **JUDGE EAGLES:** Questions for the Plaintiffs?

22 **MS. EARLS:** Thank you, Your Honor.

23 CROSS-EXAMINATION

24 **BY MS. EARLS**

25 Q Good morning, Ms. Strach.

1 A Good morning.

2 Q I want to start with the testimony you gave both in your
3 affidavit and on the stand about this conflict between the
4 canvass and the early voting periods. I just want to make
5 clear, if a primary is held on December 5th for the House --
6 for the affected House and Senate districts, the canvass under
7 state law would be 10 days later on December 15th, right?

8 A Yes, after the 5th, yes.

9 Q And if a general election for those seats, House and
10 Senate seats, is not until March 6th, the 17-day early voting
11 period does not conflict in any way with the canvass; correct?

12 A No, not for that, no. It's just with the municipal
13 elections.

14 Q And I want ask you about the cost estimates in your
15 affidavit. This is at paragraphs 40 to 47, and this is -- your
16 June 13th affidavit attached and incorporated an early
17 affidavit that you filed --

18 A Yes.

19 Q -- October 28, 2016? And at pages 40 to 47, and you can
20 take a moment, if you need to, and view those, but you
21 addressed the costs of a special election?

22 A Yes.

23 Q And am I right that if a special primary for House and
24 Senate seats in the affected counties and a special election
25 are not held together with the municipal elections, there's no

1 reason that municipalities would resist bearing the costs of
2 municipal elections, as you suggest here; correct?

3 A That's correct.

4 Q And your cost estimates assume a statewide election in all
5 counties; correct?

6 A This did, yes.

7 Q And so the costs logically would be lower if the special
8 elections are -- or if the counties where there is no special
9 election are excluded?

10 A Correct.

11 Q Now, on the issue of the fact that you have no board right
12 now, no appointed board, you addressed that in your declaration
13 in paragraph 5; am I correct? And this is the June 13, 162-1
14 at page 2.

15 A Yes.

16 Q And you say there that the Board is -- "Unless and until
17 the Governor makes appointments, the State Board is unable to
18 adjust any portion of the election schedule set by law, such as
19 the length of the absentee voting period or the dates of a
20 primary general election. So any departure from the statutory
21 election schedule must be made either by the General Assembly
22 or by an order of the Court"?

23 A That's right.

24 Q So any action that you might have needed from the State
25 Board to adjust state law to create the special election could

1 be done by this Court?

2 A Yes.

3 **MS. EARLS:** No further questions.

4 **JUDGE EAGLES:** Further questions for either State
5 Defendant?

6 **MR. PETERS:** No, Your Honor.

7 **MR. MCKNIGHT:** No, Your Honor.

8 **JUDGE EAGLES:** Thank you. You may step down.

9 (At 11:19 a.m., witness excused.)

10 **JUDGE EAGLES:** Other evidence for the Defendants?

11 **MR. PETERS:** No, Your Honor.

12 **MR. STRACH:** No, Your Honor.

13 **JUDGE EAGLES:** Any rebuttal evidence for the
14 Plaintiff?

15 **MS. EARLS:** Yes, briefly, Your Honor. We would like
16 to recall George Gilbert.

17 **JUDGE EAGLES:** All right. You are still under oath,
18 Mr. Gilbert.

19 **GEORGE N. GILBERT, PLAINTIFFS' REBUTTAL WITNESS,** at 11:19 a.m.,
20 testified as follows:

21 DIRECT EXAMINATION

22 **BY MS. EARLS**

23 Q Mr. Gilbert, you heard Ms. Strach testify about the
24 problem with creating a clone in order to do the geocoding at
25 the same time an election is going on.

1 First, let's just be clear. The process of geocoding --
2 even if you have some split precincts, if you're geocoding
3 House and Senate districts, how long might you expect that to
4 take in a county like Guilford County?

5 A I suspect that they could get it done within a week
6 easily.

7 Q Now, you heard her testify that because we have same-day
8 registration, if you're trying to do geocoding in a clone and
9 there's a new subdivision and the voter can't be found, you'd
10 have to use that same clone. In your view, as someone who's
11 actually administered the elections, is that a problem?

12 A Well, no, we don't actually create a new clone and
13 re-geocode a new address every time a same-day registrant comes
14 in whose address is not already in the file. So it really --
15 on election day -- or during early voting, we wouldn't be
16 modifying a clone.

17 Q So how do you handle someone --

18 A Well, you just handle it manually because it could happen
19 any time within that 17-day period, and you don't go out and
20 create a new clone and update that one address every time a
21 voter comes in.

22 Q And how often does that happen?

23 A Oh, you may have a handful of voters. I mean, the vast
24 majority of same-day registrants are registering at addresses
25 that are in the geocode file. So it's only those addresses

1 that were not in the geocode file that would be affected, and
2 those are, quite frankly, very rare. In a Presidential
3 Election, we might have half a dozen or a dozen, and in most
4 elections, we might have, at most, one or two.

5 MS. EARLS: Thank you. No further questions.

6 MR. STRACH: Briefly, Your Honor?

7 | JUDGE EAGLES: Yes.

BY MR. STRACH

10 Q Mr. Gilbert, just to be clear, the testimony you just gave
11 is based on information from when you were retired in 2013; is
12 that correct?

13 A That's correct.

14 Q So you've not been there for four years?

15 A That's correct.

16 Q So if any of these processes change or become more
17 complex, you wouldn't know about that; is that correct?

18 A That's correct.

19 **MR. STRACH:** Thank you, Your Honor. That's all I
20 have.

21 MR. PETERS: Nothing.

22 **JUDGE EAGLES:** Thank you. You may step down.

23 (At 11:22 a.m., witness was excused.)

24 **JUDGE EAGLES:** Any other evidence from live
25 witnesses?

1 **MS. EARLS:** Not from the Plaintiffs, Your Honor.

2 **MR. PETERS:** No, Your Honor.

3 **MR. STRACH:** No, Your Honor.

4 **JUDGE EAGLES:** Okay. Before we start hearing from
5 you all, then maybe we'll stake a short break. Let's -- we
6 will try to take a 10-minute recess.

7 (The court recessed at 11:22 a.m.)

8 (The court was called back to order at 11:37 a.m.)

9 **JUDGE EAGLES:** We're ready to hear from the parties
10 on the matters at issue. It looks like Mr. Speas is ready.

11 **MR. SPEAS:** I am, Your Honor.

12 May it please the Court, Edwin Speas with Poyner
13 Spruill, and we have two requests to the Court. One is that
14 you order the General Assembly to enact new plans within the
15 next two weeks and present those plans to you promptly for
16 approval. Our second request is for special elections.

17 I would like to address our motion to require the
18 General Assembly to enact new plans within two weeks and
19 present them for your approval. Ms. Earls will then address
20 the question of special elections.

21 Your Honors, I think this case, as well as any other,
22 illustrates the extraordinary harm that occurs and that may
23 occur when valid redistricting maps are not in place in a
24 state. I think it is absolutely correct that valid
25 redistricting plans are essential to the functioning of a

1 democracy, and harm is resulting in North Carolina today from
2 the absence of valid districts.

3 It takes at least three different forms. First, it
4 calls -- the absence of districts calls into question the very
5 capacity of the General Assembly to govern, and it calls into
6 question the integrity of the laws that a general assembly,
7 under that cloud, might enactment.

8 Attached to our brief is an affidavit from the
9 Southern Environmental Law Center pointing out that under North
10 Carolina law, there are valid and significant, as yet
11 unanswered, questions whether the current members of the
12 General Assembly are no longer de facto but, in fact, are
13 usurpers so that the General Assembly cannot act to protect the
14 safety of and welfare of our citizens. So I can think of no
15 greater harm that could ever fall any democracy than its
16 legislature be disabled from protecting the people.

17 There is a second form of harm, and that was
18 addressed by our witnesses. The lack of districts denies
19 interested candidates and political parties the opportunity to
20 perform the functions for which they are -- for which they
21 exist: To identify candidates, to support those candidates,
22 and to get those candidates elected.

23 Until there are district lines, no one can know for
24 certain what district he might be in. In the North Carolina
25 House and Senate, you have to reside in the district in which

1 you run. So in order for the political process to function,
2 districts need to be in place to protect voters and candidates
3 in our democracy. I would suggest to you, Your Honors, that
4 one reason we don't have districts today is that it's to the
5 advantage of legislative defendants not to have those plans in
6 place. It disadvantages the Democratic Party and Democratic
7 voters.

8 There's a third form of harm. When a legislature is
9 illegally constituted, and I believe that the North Carolina
10 General Assembly, with 28 invalid districts, may be the most
11 illegally constituted legislative body in the history of the
12 United States, what happens? We suggest that the history of
13 the actions of that legislative body reveal, one, a lack of
14 respect for the constitutional rights of citizens and a lack of
15 respect for the limitations on the power of the General
16 Assembly itself. Those problems are explained far more
17 articulately and in detail than I can by the very fine brief
18 the NAACP has filed in this case.

19 The second point I would like to make is this: The
20 General Assembly has had an opportunity to fix this problem.
21 It was 50 weeks ago that this Court said these districts are
22 unconstitutional. Since that time, the General Assembly has
23 met in special session in December twice. It met from
24 January 11 until June 26. The Governor asked them to convene
25 in special session to fix this problem, and they thumbed their

1 nose at it.

2 So there is -- they have had an opportunity. Should
3 they have done so before? They will tell you they were waiting
4 on instructions from the Court. I don't believe that a
5 legislative body composed of members sworn to uphold the
6 Constitution of the United States and North Carolina can sit on
7 its rear end and not correct violations of the constitutional
8 rights of citizens. It's a dereliction of their duty.

9 They will say an appeal was pending. True, but on
10 two other occasions, in the history of the state, when a plan
11 was declared unconstitutional and an appeal was pending, the
12 General Assembly enacted contingent plans. It did so just this
13 past February. That was a contingent plan. It was contingent
14 on an appeal that had not yet been decided. The same thing
15 happened in 1998. The Federal Court declared the remedial plan
16 enacted by the General Assembly unconstitutional. The State
17 sought a stay. It was denied. The General Assembly put in
18 place a contingent plan, contingent on the results of that
19 appeal.

20 So they've had the opportunity. There was no reason
21 for them not to act, and that failure to act has caused great
22 harm to the state and its citizens. Is two weeks enough? The
23 General Assembly says it's enough. There's been a statute on
24 the books since 2003 that says if a plan is declared
25 unconstitutional, the legislature needs two weeks to redraw.

1 Now, they'll say that just applies to state judges. Well, it's
2 a legislative declaration --

3 **JUDGE SCHROEDER:** You say what? I'm sorry.

4 **MR. SPEAS:** To state court cases, not federal cases.

5 Well, Your Honors, it is a legislative declaration in place
6 since 2003 and never altered. If the General Assembly says it
7 needs so much time now, why didn't it amend that statute? It
8 did not.

9 **JUDGE EAGLES:** Well, they've had seven weeks since
10 the Supreme Court decision already; right?

11 **MR. SPEAS:** They have, and experience tells us two
12 weeks is enough. There's a stipulation in the record. I don't
13 have it in front of me, but it says this: Between February 5,
14 2016, and February 19, 2016, the General Assembly hired Tom
15 Hofeller to draw the districts, held public hearings, adopted
16 criteria, and enacted new plans.

17 And that's not the first time the General Assembly
18 has acted that promptly. In 2002, a case with which Mr. Farr
19 is very familiar, the General Assembly struck down -- excuse
20 me -- the State Supreme Court struck down in their entirety the
21 State House and the State Senate plans because they violated
22 the Whole County Provision of the state constitution.

23 That violation was widespread. It occurred across
24 the state. The court -- state courts gave the General Assembly
25 two weeks to redraw it. They did it. So, Your Honors, two

1 weeks is enough to end this harm that has resulted and is
2 resulting to the citizens of North Carolina and the Plaintiffs
3 and that can and should have been cured long ago.

4 So we would ask the Court to order the General
5 Assembly no later than two weeks from today to have in place
6 new plans and, as we've previously requested, a week thereafter
7 to present to the Court and the Plaintiffs information from
8 which the Plaintiffs and this Court can determine whether those
9 plans cure the violations of the constitutional rights of our
10 Plaintiffs. Thank you.

11 **JUDGE WYNN:** Mr. Speas, address whether you contend
12 we should consider appointing a special master in any event,
13 regardless of the date, in determining as to whether there
14 should be an alternate plan. I'm thinking in terms of you have
15 objections and other procedural items that have to be taken
16 care of, and the assumption is whatever the General Assembly
17 comes up with will meet the constitutional guidelines, but if
18 it does not, it puts us in a position of then considering a
19 special master, which lengthens the time.

20 So address whether that has any input on this case
21 from your perspective.

22 **MR. SPEAS:** If the General Assembly were to enact a
23 remedial plan and that plan not remedy the defects in the plan,
24 then I believe, and we would contend, that the obligation falls
25 to this Court to take care that a new plan be put in place; and

1 at that point, you could do it yourself, you could seek
2 competing plans from the parties, or you could hire a special
3 master. That happened in Virginia, I think, just about two
4 years ago.

5 And I would point out that the statute that the
6 General Assembly enacted in 2003, GS 120-2.4, says that --
7 makes that very point, that the General Assembly will get the
8 first opportunity, but if it fails, then the Court can and
9 should redraw and cure these violations of the rights of North
10 Carolinians. The legislature has had more than adequate time
11 to cure these problems.

12 **JUDGE WYNN:** My question goes more to whether we
13 should consider appointing a special master even at this
14 juncture to prepare alternate maps to avoid delay that
15 attenuate in terms of having first to select a master, then go
16 through the objections, if, in fact, we find those maps not --

17 **MR. SPEAS:** That would make a lot of sense, Your
18 Honor.

19 **JUDGE WYNN:** I don't want to know if it makes sense.
20 I want to know what your position is on it.

21 **MR. SPEAS:** Our position would be that that would be
22 a good thing for this Court to do because it would help assure
23 that this problem is resolved, that it is resolved promptly,
24 and that it's behind North Carolinians. We would urge you to
25 do that, put in place a parallel process.

1 **JUDGE SCHROEDER:** Do you intend to offer your own
2 maps during the legislative process that's going to begin at
3 some point in time?

4 **MR. SPEAS:** Your Honor, I would expect we would offer
5 maps, yes, and we will be prepared to present maps to the
6 Court -- an alternative map to the Court, if the Court wants.

7 **JUDGE SCHROEDER:** My recollection from the evidence
8 was there were several groups that offered maps last time
9 around.

10 **JUDGE EAGLES:** To the legislature.

11 **JUDGE SCHROEDER:** To the legislature.

12 **MR. SPEAS:** There were competing maps.

13 **JUDGE SCHROEDER:** So I guess my question is -- there
14 are complaints at times that legislatures act too quickly and
15 move things through, and we know that various groups put maps
16 in last time. Is the two-week schedule one that contemplates
17 all interested parties being able to participate and have their
18 input on the mapmaking?

19 **MR. SPEAS:** Well, the two-week period would be the
20 period in which the legislature would have -- use its processes
21 to draw new maps. Competing maps may be introduced during that
22 period.

23 You are correct that during the 2011 process,
24 competing -- two sets of competing maps were introduced in the
25 House, in the Senate, and for the Congressional plan. So I

1 would expect that would happen, but beyond that, I think it
2 would also be appropriate for the Court to require the
3 Plaintiffs to present a competing plan, a plan you could
4 consider and put in place if you find the Defendants' plan
5 deficient.

6 **JUDGE SCHROEDER:** I guess what I'm not clear on is,
7 under your proposal, you're asking for an order that the State
8 within two weeks come up with maps. What happens after that?
9 I'm presuming that there's some possibility that you're not
10 going to agree with all of the maps.

11 **MR. SPEAS:** That's correct. The process that we have
12 asked the Court to put in place is that the legislature have
13 two weeks to draw them, that within a week of enactment, they
14 present to the Court and to the Plaintiffs -- I don't have it
15 right in front of me, but a set of information and answers to
16 questions from which this Court can evaluate whether or not
17 those plans cure the defects. The Plaintiffs then have some
18 time, I think we had suggested a week, to inform the Court
19 whether we contend those plans are defective.

20 **JUDGE WYNN:** Let me ask that question more direct.
21 Will you be able to present maps within two weeks?

22 **MR. SPEAS:** Yes. Other questions?

23 **JUDGE EAGLES:** Thank you.

24 **MS. EARLS:** May it please the Court, first let me, on
25 behalf of my clients, thank you for the opportunity to have

1 this evidentiary hearing and to present our arguments.

2 I have to start with where the Supreme Court led us
3 in its remand and its citation to *Swann versus*
4 *Charlotte-Mecklenburg* because that case starts -- the paragraph
5 that the Court cites, that very paragraph starts with the
6 observation that "Once a right and a violation have been shown,
7 the scope of a district court's equitable powers to remedy past
8 wrongs is broad, for breadth and flexibility are inherent and
9 equitable remedies." So that's our starting point.

10 I want to say just a couple of words about the timing
11 and the ability to draw remedial maps quickly. I need to
12 explain the significance of these two exhibits. The green
13 areas on these maps are the areas that are not impacted at all.
14 There were no unconstitutional districts in those areas. Those
15 clusters do not need to be redrawn. There is no need to redraw
16 any districts in the green areas on this map.

17 The yellow areas are the areas where the cluster does
18 not change, but there is an unconstitutional district within
19 the county or cluster so the districts within that yellow area
20 need to be redrawn.

21 The white areas are the areas of the map where the
22 clusters need to change if the Whole County Provision, as it
23 was established in the *Dickson* case, you know, maximizing the
24 number of single-county clusters, then the number of two-county
25 clusters, that is actually a mathematical formula -- that if

1 you do not have any Voting Rights Act districts that overlay
2 that and knock that Whole County Provision out, under the state
3 constitution, Dr. Hofeller's affidavit says these are the
4 clusters that they have to work with. The white areas are
5 where the cluster change and some of those clusters are
6 single-county clusters.

7 So we already know -- there's no drawing to be done.
8 Wilson County is a perfect example. In both of these maps,
9 Wilson County is either a single-county cluster, or it's in
10 a -- I'm blanking on what county it's with on the Senate side,
11 but on the House side, Wilson County is a single-county
12 cluster. It's a single legislative district. There's no
13 redrawing to be done, even though it is in the white area there
14 because --

15 **JUDGE WYNN:** Let me ask a question because from the
16 trial, as I recall it, correct me if I'm wrong, because the
17 Voting Rights Act was the basis for what the General Assembly
18 contended it initially drew these districts for, there were
19 provisions like the Whole County Provisions under the state law
20 for which they were able to, maybe not strictly, comply with.
21 That seems to be absent now, I would think. I'm not sure, but
22 is there not a greater degree of compliance that now has to be
23 exercised with regard to the state law on this, on Whole County
24 Provisions, and would it not possibly affect much more than
25 what you have here?

1 **MS. EARLS:** The first answer is yes. It does mean --
2 if you do have a Voting Rights Act potential violation so that
3 there's no concern under the federal Voting Rights Act, then,
4 yes, the state Whole County Provision then governs absolutely
5 and controls, but the second part of your answer -- question is
6 already answered here because what Dr. Hofeller testifies in
7 his affidavit, filed back in October, is that following the
8 state Whole County Provision, these are the clusters that are
9 basically mathematically required using the 2010 Census data.

10 **JUDGE WYNN:** I have one other question just because
11 it's just bugging me because it's out there. We cannot live in
12 the dark that there's not another litigation going on in the
13 state Supreme Court, the *Dickson* case. Of course, that deals
14 with the federal side of things there. How would that affect
15 what's going on here?

16 **MS. EARLS:** So the state --

17 **JUDGE WYNN:** I don't mean it -- you to speculate, but
18 what are the issues before them that could parallel with things
19 we are doing here? And I'm taking it that this is -- I'm
20 assuming it would be primarily a federal question in the State
21 Supreme Court, but the State Supreme Court can do what it wants
22 to do. It may want to go under the state constitution or not,
23 and I don't want to get there, but how, at least in terms of
24 the federal issue before it and what's before it now, the
25 hearing that's coming up I think within the next month or two,

1 will affect here.

2 **MS. EARLS:** So the State Supreme Court has set that
3 case on the calendar to be argued August 28. There is a
4 briefing schedule, and we will be filing our brief next Monday.
5 Our view is that the state constitution requires the state
6 court to abide by the federal constitution, and the U.S.
7 Supreme Court has said that these districts violate the federal
8 constitution.

9 So other than questions of -- I mean, we think that
10 the state court --

11 **JUDGE WYNN:** I thought you had to abide by the
12 federal constitution regardless.

13 **MS. EARLS:** Well, I'm just saying we're doubling down
14 on that, Your Honor, but because we think that the state
15 court -- that the proper course for the State Supreme Court is
16 to remand to the trial court to issue an order finding these
17 districts unconstitutional, that the state court has an
18 obligation to issue a ruling, that the case is not exactly
19 moot, but they have an obligation to issue a ruling.

20 So could that then trigger an obligation to have a
21 remedial process under the state court supervision?

22 Theoretically, but I think -- and there's two separate sets of
23 Plaintiffs, but I think once new maps are drawn, then there's
24 no longer a need for remedy, which in some ways is another
25 argument for why we need new maps drawn quickly. The

1 Plaintiffs -- the final order in this case finding these
2 districts unconstitutional cannot be appealed any further. We
3 need new districts drawn. That will resolve any lingering
4 potential remedy responsibilities of state courts. So that's
5 how I would answer that.

6 So what we're saying about these two exhibits is that
7 this is the basic architecture of what the districts need to
8 look like. There are some two-county clusters that are
9 themselves a single district. There's no redrawing to do
10 there. The only thing left is to subdivide the single counties
11 that have multiple districts, Mecklenburg County, Wake County,
12 to subdivide those, and to divide the multiple-county
13 districts -- multiple-county clusters that have multiple
14 districts.

15 **JUDGE SCHROEDER:** So are you saying that the green
16 districts are not going to be part of any new mapmaking, that
17 they're done?

18 **MS. EARLS:** That's correct, Your Honor.

19 **JUDGE SCHROEDER:** So would that mean necessarily that
20 anybody who wants to run for elections in those districts now
21 knows their district, and so they're not in this uncertainty
22 area that we've heard testimony about?

23 **MS. EARLS:** That's right, Your Honor. And there
24 wouldn't need to be any special election in those areas.
25 They're just not impacted by the ruling.

1 **JUDGE EAGLES:** Do the Defendants agree with you about
2 that?

3 **MS. EARLS:** Well, Your Honor --

4 **JUDGE EAGLES:** Or can you tell?

5 **MS. EARLS:** This is what I can tell you. There was a
6 public hearing -- or, I'm sorry, there was a committee hearing
7 yesterday of the Joint Redistricting Committee; and while this
8 is not evidence before you, it's my understanding, and
9 Defendants can correct me, but Representative Lewis said at
10 that hearing, when asked by another legislator do they redrew
11 all the map or just some, and he said we are waiting for
12 direction from the Court.

13 What I would say to you about why the green areas
14 don't need to be redrawn is because the state constitution also
15 says that we only redraw our districts every ten years. Unlike
16 other states that allow mid-decade redistricting, North
17 Carolina does not under the state constitution. So to redraw
18 districts in those green areas would be to allow the General
19 Assembly to do a mid-decade re-redistricting, which is not
20 permitted under the state constitution.

21 So when you understand that all they need to do is
22 subdivide the clusters that have multiple districts, the
23 discretion is constrained, the alternatives are not, you know,
24 as great, and it is not a time-consuming or difficult task, and
25 I will tell you --

1 **JUDGE SCHROEDER:** You're still subject to the Voting
2 Rights Act?

3 **MS. EARLS:** Yes.

4 **JUDGE SCHROEDER:** And my recollection from the trial
5 was that Plaintiffs agreed that some of these districts
6 probably are still going to have to be VRA districts.

7 **MS. EARLS:** What we agreed was that there are areas
8 of the state where you would be violating the Voting Rights Act
9 if you dismantled what is -- because of the way you have
10 majority-black counties in the northeastern part of the state,
11 if you were to dismantle those and not have majority-black
12 districts, that could be a violation of the Voting Rights Act,
13 but we have not -- and, similarly, in Mecklenburg County,
14 particularly for House districts, the black population is large
15 enough and geographically compact enough that there's likely to
16 be a majority-black district in that area of the state. So our
17 point is there will still be majority-black districts, but
18 based on the evidence in the record in this case, we are not
19 saying that there's any place where the Whole County Provision
20 should give way to a Voting Rights Act district.

21 The other thing to know about the timing and does the
22 public have enough opportunity to have input, at that committee
23 hearing yesterday, Common Cause, a good government group,
24 submitted maps that they wanted the General Assembly to
25 consider. So the public, to the extent there are folks out

1 there interested in participating, have drawn maps, and they
2 would have an opportunity if the General Assembly would make
3 their maps -- make their proposals public and have a public
4 hearing, they could do this in the time period we're suggesting
5 and allow for public input.

6 So let me then turn to the entirely separate question
7 of whether the equities in this case justify a special
8 election, and I want to be clear there first that the timetable
9 we've submitted is illustrative. We think that you could --
10 there's a potential to put the dates out a little longer; that
11 is to say, to have the general election in April instead of
12 March, but we think that you could instruct the Board of
13 Elections Defendant to have a primary on December 5, a general
14 election on March 6, and allow them to determine what the
15 interim deadlines should be based on their election
16 administration considerations and for them to let you know
17 what, if any, state laws need to be modified or, you know, an
18 exception made for this case in order to implement the remedy
19 that they come up with.

20 So our scheduling was just illustrative to show you
21 that, yes, it really is possible. Now, the State said that
22 they needed at least 13 weeks before the primary and 13 weeks
23 before the general election. Our schedule does achieve that 13
24 weeks between the primary and the general election, and we
25 think the evidence here and the testimony here shows that, in

1 fact, you can get that geocoding done. You can get the filing
2 period in. You can get the ballots prepared. You don't need a
3 full 13 weeks before the primary.

4 So we submitted that illustrative schedule to
5 demonstrate that it's feasible and possible, but I think the
6 election administrators are in the best position to decide what
7 should be the deadline for doing the logic and accuracy testing
8 should there be a 45-day absentee balloting period or a 50-day
9 absentee balloting period. There's some wiggle room in the
10 schedule.

11 **JUDGE SCHROEDER:** You're talking about a special
12 election, and then there is the 2018 election as well; correct?

13 **MS. EARLS:** Correct.

14 **JUDGE SCHROEDER:** So they would be overlapping at
15 some point?

16 **MS. EARLS:** Well, in the sense that the filing period
17 for the 2018 elections would be in February. That would be
18 after the December primary but before the March general
19 election. So there would be some overlap there, which has
20 happened in the past when we've had special elections to fill a
21 vacant seat. Candidates have had to file twice because they
22 want to file for the special election and then also file for
23 the general election.

24 **JUDGE WYNN:** Well, you know, feasibility,
25 possibility, a lot of factors that are primary with the Supreme

1 Court, and I'm thinking in terms of the disruptiveness.

2 **MS. EARLS:** So let me address that. Part of our
3 argument concerning this notion that under state law, once the
4 finality of the determination that the districts are
5 unconstitutional has been made, the office holders are, in
6 fact, usurpers and don't have the power to act, we don't think
7 that you have to decide that issue of state law; but I think
8 that it does demonstrate that there's a real public interest at
9 stake, and it's a very strong argument, and, in fact, there is
10 a case from Connecticut where the federal court actually
11 ordered that the -- and we cite this in our brief. The federal
12 court ordered that the legislature not take any more action
13 until they get themselves constitutionally constituted. It was
14 the "one person, one vote" claim. It was before the racial
15 gerrymandering theory.

16 **JUDGE WYNN:** When you say constitution, you mean
17 under the state constitution?

18 **MS. EARLS:** No, this was a federal "one person, one
19 vote." The Connecticut legislature was very malapportioned,
20 and the Court said you can't -- we've decided finally that this
21 is -- you're not being elected from constitutional districts,
22 and we're going to order that you take no more action until you
23 are reconstituted. Now, they did stay that order on the
24 condition that the legislature follow the timetable that the
25 Court was imposing for them to do that, but it shows the

1 viability of this theory and the possibility that if this
2 legislature takes actions during the period of time that they
3 are elected from unconstitutional districts, it throws open to
4 challenge those actions under state law, under our state
5 constitution and state precedent.

6 And I would also say that the disruption -- so, in
7 other words, the disruption is in not drawing new districts and
8 in not having special elections. That's what's going to create
9 more disruption than if you go ahead and do it.

10 Also very significantly -- and that was a factor that
11 wasn't present in 2016 because arguably the appeal was still
12 pending, but now the appeal is not pending. We're in a very
13 different --

14 **JUDGE WYNN:** You said it throws it under state law
15 the actions of this illegally constituted General Assembly,
16 and, of course, you know, North Carolina is one of the states
17 where you can't certify questions to the Supreme Court of North
18 Carolina, even though the other four states in the district
19 allows that. I'm wondering in the *Dickson* case is that a
20 potential issue that would be resolved because that seems to be
21 the court that really needs to decide that kind of question?

22 **MS. EARLS:** I agree that that's the court that should
23 decide that question, but I think what you can take into
24 account -- in balancing the equities and what kind of
25 disruption might occur if you call for a special election, you

1 can take into account that the possibility that that type of
2 claim could be raised -- it shows the disruption of not having
3 special elections, and that's why we filed the affidavit of
4 Derb Carter and why the NAACP brief is significant because this
5 is not just speculation. There are actually parties who are
6 looking at this potential claim if the legislature acts, and I
7 think that's a factor in your equitable consideration that you
8 can into account. You don't have to decide the state law, but
9 it is certainly weighty enough that you can take that into
10 account.

11 The other very important thing I need to say about
12 disruption is to remind you about Representative Martin's
13 testimony. Unlike 2016, when the legislature was in session,
14 and it was a long session, they had to determine a budget for
15 the state, we are now in a period of time when we're asking for
16 special elections when the legislature is not in session; and
17 so the notion that, by requiring them to campaign, you're
18 taking them away from their legislative duties carries less
19 force now with the schedule that we're requesting than it did
20 the last time we requested a special election.

21 So I think -- and, finally, I'll will say that the
22 submission by the State of North Carolina acknowledges that
23 there will be some disruption but says that if the Court, in
24 its -- in the exercise of its equitable balancing, determines
25 that rights of the Plaintiffs in this case and the public

1 interest demand a special election, then the State can weather
2 the disruption and conduct a special election. I think that
3 those are all important factors on the question of disruption.

4 Let me also turn to the severity and nature of the
5 particular constitutional violation because here this is a very
6 extensive violation, impacting more of the state that's ever
7 been impacted before in redistricting litigation. The State of
8 North Carolina's filing says that they do not dispute the
9 severity of harms that flow from unconstitutional racial
10 gerrymandering.

11 It's important to take you back to the testimony of
12 our individual Plaintiffs at the trial, and we summarized this
13 at pages 3 to 5 of the brief that we filed, and we tried to
14 summarize the multiple briefs and submissions that we've made
15 on the issue of special elections, but this is Document 156.
16 At pages 3 to 5, we recount the testimony of the Plaintiffs who
17 talked about the harm that they experienced from being assigned
18 to districts on the basis of their race, and that harm
19 continues, and this Court's actions in saying that that harm
20 needs to stop now and we need to elect people from districts
21 that aren't drawn in that way is an important factor in
22 weighing the equities.

23 And then, finally, I'd like to say that on -- the
24 third thing you're supposed to look at is the need for judicial
25 restraint, and here I think that this Court has excessively

1 shown judicial restraint. We asked for a preliminary
2 injunction before the trial, and the Court, in its wisdom,
3 determined that that was not called for at that time.

4 After the Court -- the Court's decision -- the
5 Supreme Court's decision, the 9-0 summary affirmance of this
6 Court's opinion, the legislature has done everything possible
7 to delay the absolute -- until the absolute possible last
8 minute complying with this Court's orders and the legislature's
9 obligation to uphold the constitution.

10 They filed pleadings in the Supreme Court to delay
11 you getting jurisdiction, and the only right that they were
12 protecting there was their right to file a motion for
13 reconsideration. That motion was not filed. I submit to you
14 there was never any intent to file that motion. Most of their
15 briefing is about why there's no need for a special election,
16 but that's really not -- Plaintiffs shouldn't have to wait for
17 30 days for procedural wrangling in a way that really wasn't in
18 good faith because they genuinely were going to ask a 9-0
19 summary affirmance to be reconsidered.

20 So while there is a lot of talk in their briefing
21 about they come with clean hands, I submit to you that on the
22 question of remedy that has not been the case. The State's --

23 **JUDGE EAGLES:** You just have a few minutes left. So
24 if you want any rebuttal time --

25 **MS. EARLS:** Thank you. Let me just say that the

1 stakes really are high in terms of whether or not there's a
2 special election. The harm that our clients suffer is real,
3 and we ask you to order a special election in 2018. Thank you.

4 **JUDGE EAGLES:** All right. Thank you.

5 **MR. PETERS:** Thank you, Your Honor. May it please
6 the Court, as the State and the State Board of Elections, and I
7 think it's important, said in the position statement we filed
8 with the Court, and I just want to reiterate it today, we are
9 not taking a position on the two motions that the Plaintiffs
10 have filed. We understand the harms on both sides, potential
11 harms and the actual harms, the interest, and the other
12 considerations that the Court is faced with trying to balance
13 here. So our goal and what we have seen as our role here is to
14 try to present the Court with the best information that we can
15 so that the Court can make the most informed decision on how to
16 balance those harms.

17 So I simply wanted to rise and say that's the extent
18 of the argument we have today. That's the reason that we
19 provided the testimony of Ms. Strach so that the Court could
20 make as informed a decision as possible.

21 **JUDGE EAGLES:** So are you taking any position on the
22 nature of the decisions that the legislature needs to make to
23 redistrict? I mean, do you agree with what the Plaintiff says
24 about the legislature doesn't need to do any redistricting in
25 the green counties?

1 **MR. PETERS:** I think that's one that we do not have a
2 position on and would leave that to the legislature to take a
3 position on.

4 **JUDGE EAGLES:** All right.

5 **MR. PETERS:** Thank you.

6 **JUDGE EAGLES:** Thank you.

7 **MR. STRACH:** May it please the Court, Your Honors, we
8 briefed this, I believe, fairly extensively. We focused on the
9 criteria that the U.S. Supreme Court asked us and the Court to
10 focus on. I'll -- other than questions from the Court, I'll
11 try to address issues that have been raised since then, if
12 that's okay.

13 One of the issues I do want -- one of the ways I want
14 to frame this for the Court is that I don't think it's
15 necessarily two separate questions: What should be the
16 redistricting schedule versus whether there should be a special
17 election.

18 If the Court does not order a special election, then
19 there is no need to order an unduly truncated redistricting
20 timeline. We think that the only reason that the Court should
21 order any redistricting at an unduly truncated pace would be if
22 it does order special elections so that there is some election
23 coming up. Otherwise --

24 **JUDGE EAGLES:** That actually -- that's an interesting
25 theory.

1 **MR. STRACH:** Otherwise, Your Honor, we believe --

2 **JUDGE EAGLES:** You might not like the result of that
3 theory. I mean, if you tag them together, that's -- go ahead.

4 **MR. STRACH:** Your Honor, we believe that the
5 redistricting schedule that we've proposed is plenty of time
6 for this Court to review, for the public to provide input and
7 have plans in place for the 2018 elections.

8 **JUDGE EAGLES:** Why do you need a year and three and a
9 half months to redistrict?

10 **MR. STRACH:** Well, Your Honor, we started with this
11 Court's order of August of 2016, and that Court's order said
12 you need to redistrict in your next regular session, and you
13 can't --

14 **JUDGE EAGLES:** Which has come and gone.

15 **MR. STRACH:** -- and you can't use the 2011 plans
16 anymore. When that order was entered, there was a prior
17 legislature in place. A new legislature took over in 2017. So
18 it wouldn't have made any sense for a prior legislature to try
19 to begin the process of redistricting that was going to be
20 concluded by another legislature.

21 **JUDGE EAGLES:** Why not?

22 **MR. STRACH:** Because it's different legislatures.

23 **JUDGE EAGLES:** Well, so? The 2011 redistricting --

24 **MR. STRACH:** Your Honor --

25 **JUDGE EAGLES:** That's how it always works.

1 **MR. STRACH:** Your Honor, with all due respect, it
2 doesn't. The 2011 redistricting was all started and finished
3 by one legislature.

4 **JUDGE EAGLES:** Why couldn't the 2016 legislature
5 start it and finish it?

6 **MR. STRACH:** Because they would be yielding to a 2017
7 legislature that might start all over or might have to make
8 different decisions. They don't know. They were new
9 legislators coming in.

10 **JUDGE EAGLES:** In the -- okay. Well, all right. Go
11 ahead.

12 **MR. STRACH:** So in 2017, Your Honor, the legislature
13 started its regular biennial regular session. It's a two-year
14 session. Under this Court's order in August, the legislature
15 had two years to redistrict, and that's what the General
16 Assembly decided to do. It decided to focus in the first part
17 of 2017 on the public's business during its long session
18 because redistricting is a very arduous, difficult task. It
19 takes a lot of time and attention.

20 **JUDGE EAGLES:** You're saying that the legislature has
21 until the end of 2018 to redistrict for the 2018 election?

22 **MR. STRACH:** The legislature has to make sure plans
23 are in place that can be used in the 2018 elections, and it has
24 its regular biennial session to do that, provided it can make
25 sure the plans are in place for the 2018 elections. The

1 schedule we have proposed does just that. If the maps are
2 enacted by mid-November, this Court will have several months to
3 review. The Board of Elections will have time --

4 **JUDGE EAGLES:** Several months? Because you have a
5 February filing; right? The filing period opens in February.

6 **MR. STRACH:** That's correct. The Court would have --

7 **JUDGE EAGLES:** So November.

8 **MR. STRACH:** December.

9 **JUDGE EAGLES:** Yeah, but, you know, briefing --
10 ordinarily, we try to give you a little bit of time anyway to
11 talk to us. You wouldn't even have the briefing completed
12 until the end of December, I mean, under your schedule, and
13 that would give hardly any time at all for us to actually think
14 about it.

15 **MR. STRACH:** Well, Your Honor, it's a lot more time
16 than what the Plaintiffs have proposed. If you look at their
17 proposed schedule attached to their latest brief, they give the
18 Court approximately two weeks to review the new maps.

19 **JUDGE EAGLES:** There's other alternatives than what
20 they've proposed.

21 **MR. STRACH:** Well, I'm just referring to what the
22 Plaintiffs have proposed. I think two months is a lot more
23 reasonable than two weeks.

24 Then the State Board of Elections would have at least
25 a month to assign the new voters, and there would be plenty of

1 time for all that to be done before the filing period opened in
2 February. That is the schedule that the legislature has
3 proposed. That allows, Your Honors, for an orderly process. I
4 think what we would request is that the Court, in considering
5 this question, focus on the factors that the Supreme Court asks
6 the Court to consider. The Supreme Court talked about the
7 ordinary processes of governments. It talked about the
8 intrusion on state sovereignty.

9 **JUDGE WYNN:** That's where it gets a little difficult.
10 The Supreme Court order went to our order for you to have a
11 special election this year, and in doing that, they said, no,
12 we want you to look at these three factors here. I don't
13 recall the Supreme Court telling us when to require the maps to
14 be drawn. In fact, our order has been in place, as Judge
15 Eagles pointed out.

16 The problem is the order has been in place since 2016
17 and even -- the Court's order was there. We found those
18 districts to be in violation of the constitution because they
19 were unconstitutionally considering race in the process of it.
20 It goes to the Supreme Court. We cannot be blind to the *Harris*
21 case, which is attenuated to it. Before that, the Supreme
22 Court looked at that case almost on all fours and says, yes,
23 racial gerrymandering. You had to know this case was going to
24 be affirmed. You had to know that, or it would have been a
25 surprise. It was affirmed unanimously, and you had that time

1 period.

2 What concerns at least me is the seriousness at
3 what -- how this is being taken by the General Assembly. This
4 is serious. We have districts, 28 districts, that are drawn in
5 violation of the constitution, drawn in a manner so that they
6 infringe unlawfully in the use of race, and the General
7 Assembly is -- you're asking us to keep delaying it, and if we
8 delay it -- even if you bring the maps in here, that does not
9 mean they will be accepted. Then we're put in a position we
10 put in a special master. Then we're looking at elections way
11 down the road.

12 So if we don't look at those two considerations, on
13 the one hand, I can tell you, quite frankly, and I just want to
14 be frank about it, it does look difficult to call an election
15 for this year from my perspective; but the prospect of doing
16 something that's outside the Supreme Court order to say bring
17 those maps in here, let us take a look at them, alternatively,
18 we could and there have been courts to say we'll appoint a
19 special master right now, and if you bring those maps in here
20 and we don't like them, we're going to take those other maps if
21 we want those. We don't want to do that kind of thing. I
22 don't think that's the kind of the thing the court -- we want
23 to stay out of this, but we want to feel something from the
24 State that you are moving to correct this.

25 **JUDGE EAGLES:** You don't seem serious. You don't

1 seem serious. So what's our assurance that you're serious
2 about remedying this constitutional violation?

3 **MR. STRACH:** Well, Your Honor, with all due respect,
4 we would respectfully disagree with that.

5 **JUDGE WYNN:** Tell me what you disagree with.

6 **JUDGE EAGLES:** What part of that do you disagree
7 with?

8 **MR. STRACH:** The State has been -- as soon as their
9 long session was over, they appointed the redistricting
10 committees. The committees have met. They are in the process.
11 They have laid out a timeline for extensive public hearing and
12 input. There's a process. If Your Honors want a map to come
13 back to this Court --

14 **JUDGE WYNN:** What will your public hearings be on?
15 You've had public hearings. I've heard testimony at the trial
16 on public hearings ad nauseam. You've had a trial on this. We
17 know what the problem is. Don't we need some maps to be able
18 to move from there?

19 **MR. STRACH:** Well, Your Honors, as the Plaintiffs
20 have pointed out, the county groupings are going to change
21 extensively. That's going to require --

22 **JUDGE EAGLES:** That's not what they said.

23 **MR. STRACH:** They said that we're going to have to
24 use the groupings that comply strictly with Stephenson. I did
25 hear them say that.

1 **JUDGE EAGLES:** Okay. But do you agree that the green
2 counties on these maps will not need to be touched?

3 **MR. STRACH:** That's my personal opinion, but that
4 will be a decision that the redistricting committees make.

5 So the -- but what we do know, Your Honors, is that
6 the county groupings are going to -- the 2011 county groupings
7 are illegal under the *Stephenson* case. They cannot be used.
8 So we will have to go to the more strict compliance with the
9 *Stephenson* county groupings. That's going to result in
10 significant changes to the districts within those groupings.
11 We believe that the committee members and that the public has a
12 right to comment on those groupings, on the criteria that are
13 going to be used to draw the districts within those groupings,
14 and then the districts that are formed from those groupings;
15 and we also believe that this is serious, and we believe that
16 the legislature was criticized for not giving enough process or
17 for people to review things.

18 So we --

19 **JUDGE WYNN:** Do you believe if we enter an order for
20 you to have those maps by this earlier date, that you will not
21 have those maps in here?

22 **MR. STRACH:** Your Honor, the legislature intends to
23 comply with whatever order this Court enters.

24 **JUDGE WYNN:** You only are telling me it would be very
25 difficult, and it would be hard to do?

1 **MR. STRACH:** Your Honor --

2 **JUDGE EAGLES:** But you've created those problems by
3 not doing anything over the past year. I mean, the fact that
4 you don't -- you haven't had any hearings, the fact that you
5 don't have any evidence, the fact that you haven't put maps out
6 there, that's the legislature's fault. They could have done
7 all of those things. After six federal judges said that they
8 were wrong on the law, you know, you might think somebody would
9 -- who was taking it seriously would have started doing at
10 least some contingency plan.

11 **MR. STRACH:** Your Honor, someone who takes it
12 seriously makes a plan to do it right, and that's what we are
13 doing. That's what the legislature is doing. The legislature
14 has a plan to do it right; and if the Court wants it done
15 right, then the plan that we've outlined we believe is the way
16 to go.

17 Now, whatever this Court orders, the legislature will
18 comply with, but it won't be the legislature that is the only
19 party that is hurt with an unfairly truncated process. It will
20 be --

21 **JUDGE WYNN:** We will oversee those maps. We will
22 review them. We will allow for objections. If they come in
23 and they don't do those things, we can allow you to fix them.

24 **MR. STRACH:** But, Your Honor, with all due respect, I
25 do not believe that that process substitutes for public

1 hearings all across the state, which is what the legislature
2 intends to do.

3 **JUDGE WYNN:** But could we not even then say, well, it
4 looks like this could use some help from public hearings?

5 The problem is we need to do something here.
6 Something needs to be done in the state of North Carolina to
7 draw these maps and have constitutional maps in North Carolina.
8 The people elected under the unconstitutional districts, in
9 fact, will continue to serve. In fact, they are the very ones
10 drawing the maps, unlike some of the cases that we've had with
11 the congressional -- I mean, you brought up the congressional
12 districts. They are not running for those congressional
13 districts. None of the congressmen drew that map. Those are
14 the legislators. This is maps, many of them, for their own
15 district, for their own purpose, their own reasons, and we, the
16 Courts, have allowed that to be done.

17 All we are saying is bring us something so we can
18 review it, and if we don't like it, we're going to let you know
19 we don't like it, and there are cases out there in which we can
20 appoint special masters. We can draw them, as you say,
21 ourselves. We don't want to do that. We want our legislature
22 to do what it's supposed to do. That's all we're asking.

23 You say if we order you to do it, you'll bring those
24 maps in here. We will review them. We will be as fair as we
25 possibly can. And say you need special -- you need special

1 hearings? You need other input? Okay, let's get it in. This
2 is about the people of North Carolina. It's not a
3 back-and-forth between the Plaintiffs and the Defendants here.
4 This is our state. We've got to do something here. Don't you
5 agree?

6 **MR. STRACH:** Your Honor, we do not disagree about
7 that. We do believe it is about the state of North Carolina
8 and its people. This is not about politics.

9 **JUDGE WYNN:** Absolutely.

10 **MR. STRACH:** This is about the people, and that is
11 true. What we have done is we have outlined a process to do
12 what's right for the people, and that's what we intend to do;
13 and if this Court wants to set a deadline for the legislature
14 to get that done, the legislature --

15 **JUDGE EAGLES:** Well, we already set a deadline, and
16 you didn't follow it.

17 **MR. STRACH:** We have followed it, Your Honor. We're
18 following it now. The deadline that was set in the August 2016
19 order is not over.

20 **JUDGE EAGLES:** Okay.

21 **MR. STRACH:** The actions we have taken, Your Honors,
22 are fully consistent with that order fully.

23 **JUDGE WYNN:** It seems to me -- when we had the trial,
24 it seems like there was a question of whether we should
25 immediately require those districts to be drawn for 2016. We

1 said, no, that's not enough time. Ultimately, in August, we
2 found this -- we issued an opinion and the fallout there. So
3 we've been knowing this for two years now that these districts
4 are unconstitutional. You took it to the Supreme Court, but
5 that's a unanimous opinion out of the Supreme Court that says
6 these districts are unconstitutional.

7 It just seems to me that in the interest of doing
8 something in compliance with the law and not having illegal
9 districts in which individuals are serving in -- and, again,
10 those people are the ones drawing the map, but I'm not going to
11 go there with that. I'm just saying that's the instance of
12 what's going on. It just seems to me we really need to move
13 with this and do it in a positive way, and you had plenty of
14 time. You knew when the *Harris* case came down. Then you knew
15 when this case -- even though the Supreme Court hadn't issued
16 its mandate, it had affirmed it. I've rarely seen a Supreme
17 Court between the premise and the mandate change an opinion.
18 There was no hope of that even happening.

19 So you've known it since then, and the legislature
20 has had an opportunity. I don't want to get too much into the
21 Governor brings a special session. I know that can be
22 political. I'm not trying to get into the politics of this,
23 but the opportunity is there, and I want to see, at least from
24 my perspective, that opportunity being exercised seriously and
25 in good faith without regard to these other things out there.

1 Everybody has got different opinions on stuff, but let's work
2 to get this done.

3 **MR. STRACH:** That's exactly what we're doing, Your
4 Honor. We agree with you. That's exactly what we're doing.

5 I do want point to out -- you mentioned several
6 times, Your Honor, about who is drawing the districts. There
7 are 28 illegal districts. That's only about 16 percent of the
8 entire General Assembly. Those 28 districts are currently --
9 currently elect 28 African-American Democrats. Every other
10 district in that General Assembly is legal. Every other member
11 of that General Assembly that's going to be drawing these
12 districts is in a legal district and is fully entitled to be
13 there.

14 **JUDGE WYNN:** Well, I mean, we could probably go
15 back -- I don't want to go back and forth on that, but you know
16 that the drawing of those illegal districts is what affected
17 those other districts, clearly. I mean, that's what this is
18 about. If it was just about those districts, we wouldn't be
19 here. It's what it did to the other ones around them. When
20 you did those things, you used race as the basis for them.

21 **MR. STRACH:** I'm sorry, Your Honor --

22 **JUDGE WYNN:** I got your point, though, in terms of
23 where you're going with it.

24 **MR. STRACH:** Thank you, Your Honor. I would just say
25 that this Court didn't hold those other districts illegal. It

1 confined its order to 28 districts.

2 **JUDGE WYNN:** I don't even want to get into the
3 business of whether they are illegal now for purposes for your
4 authority to draw the maps. I just point it out that that is
5 something that's there. That's not a decision I think we need
6 to make, at least from my perspective.

7 **MR. STRACH:** I understand. So suffice it to say,
8 what the legislature has tried to do is create a process that
9 is orderly, that is consistent with the factors that the U.S.
10 Supreme Court has come up with, that will put us on a track to
11 have districts that can be approved by this Court in plenty of
12 time to use in 2018, which is consistent with this Court's
13 August 2016 order. That is what the legislature has done. I
14 don't know any other way to say it other than to say it that
15 way.

16 **JUDGE SCHROEDER:** Can you say how many legislative
17 days are contemplated in your proposal, or hours or days,
18 however you measure it?

19 **MR. STRACH:** Well, Your Honor, typically the way the
20 process works is the redistricting committees meet sometimes
21 jointly to look at criteria, et cetera. Then they meet
22 separately to look at their own maps. They also meet jointly
23 in public hearings. A lot of that work is often done outside
24 the active session. It's done during adjournment periods.
25 Then the legislature comes back into session for an actual

1 redistricting. That can last, Your Honor, from -- in 2003, it
2 lasted one day. The legislature came in and redistricted in
3 one day. Sometimes it can last a week or longer. It depends
4 on how complicated the redistricting is.

5 **JUDGE SCHROEDER:** You mentioned public hearings
6 around the state.

7 **MR. STRACH:** Yes.

8 **JUDGE SCHROEDER:** Can you explain how many of those
9 you're contemplating?

10 **MR. STRACH:** We're contemplating at least three sets
11 of public hearings and trying to spread them out to give the
12 public plenty of opportunity to think about what's happening,
13 having them in August, September, and October, and then
14 following that up with a redistricting session in early
15 November once all that's been received.

16 **JUDGE EAGLES:** And so would those public sessions be
17 after proposed maps have been released?

18 **MR. STRACH:** Your Honor, the intent is to have the
19 public something to look at that they can comment on. So, for
20 instance, if the committee adopts criteria, we want to have a
21 public hearing on those criteria that they can look at. If the
22 House committee adopts a House map, we want the public to be
23 able to weigh in on that map. If the Senate committee adopts a
24 Senate map, we want the public to weigh in on that map.

25 **JUDGE EAGLES:** Well, you've had public hearings about

1 criteria. I mean, that's what you did back in 2011; right?
2 You had these hearings and people -- this is -- why do you need
3 to do that again?

4 **MR. STRACH:** Well, Your Honor, simply because 2011 is
5 a long time ago, I can assure you. It seems like decades ago,
6 but people change. New people have moved into the state.
7 People's minds have changed. Again, this map is going to look
8 a lot different than the 2011 map, and people need to
9 understand to be able to weigh in on the criteria that the
10 legislature believes it needs to use to draw that map.

11 So we believe that that is a very critical piece of
12 this process, and then we want folks to be able to weigh in on
13 the House map, and we want them to weigh in on the Senate map.
14 That's the intent. We believe that's an orderly process. We
15 believe that's what the Supreme Court would expect from a
16 federal court overseeing the very delicate task of remedial
17 redistricting by a sovereign state.

18 **JUDGE SCHROEDER:** What census data do you use?

19 **MR. STRACH:** We will be using the 2010 Census data
20 because that's the latest census data that's available to use
21 that is actual census data.

22 **JUDGE WYNN:** I'm thinking in terms of these public
23 hearings. If the worst-case scenario, which we hope does not
24 happen, comes back with a set of maps and we say, no, these are
25 not acceptable, we then appoint a special master. There are

1 cases in which there's no public hearing. The Court draws
2 those maps just straight up.

3 I'm thinking in terms of this case and the timing,
4 and we've got to look at the case for what it is. 2010 Census.
5 There's another census in 2020. This is going to turn around
6 and happen, I don't care what you do, pretty soon again because
7 in 2020 you've got another census. Another redistricting
8 happens after 2020 irrespective of this one.

9 So we're talking about a small period of time that
10 we're dealing with here, and I understand in terms of the
11 public hearings and what's there and the need for the General
12 Assembly to get this information. If the General Assembly
13 really feels that way, why haven't you already conducted some
14 public hearings? Why haven't you already done something in the
15 two years, if no more than the last couple of months, along
16 those lines?

17 **MR. STRACH:** Well, Your Honor, because these maps
18 don't have to be used until the 2018 elections. So we are
19 making sure we're getting public comment in time to be used for
20 2018 elections. That's our deadline under the Court's current
21 order.

22 **JUDGE WYNN:** Isn't there a problem if you -- you
23 know, you think about it. I've run in statewide elections. I
24 know what it was like. You don't know the districts. The
25 candidates have no idea what the districts are right now. They

1 don't know want to do, where they live, a lot of
2 considerations. As long as we don't have those maps, there's
3 just a lot of variables out there that will not be settled.
4 And what's the public going to comment on if they don't know
5 who is where? I'm confused on that.

6 **MR. STRACH:** They will know. As I explained, the
7 intent is to release maps and then have public hearings, so
8 they will know. They will absolutely be able to weigh in on --

9 **JUDGE WYNN:** And then you will come back and
10 potentially change those maps.

11 **MR. STRACH:** We'll take the input and the committees
12 will do what --

13 **JUDGE WYNN:** So they still won't know because it
14 could change. My question at this point is -- if we ask you to
15 bring us maps, those are maps. Go have your public hearings.
16 We could say go have public hearings, and if you come back with
17 significant input, we can allow you to go back and change them,
18 but at least we'd have some maps to work with. That's what we
19 don't have now.

20 **MR. STRACH:** Well, Your Honor, again, the Court can
21 do whatever the Court can do. We think that would be a
22 disservice to the public.

23 **JUDGE WYNN:** We're trying to be fair about it. We
24 want to be as fair as possible. We just don't want to get in
25 the business of drawing these maps. We really want the General

1 Assembly to do its job and do it in a --

2 **JUDGE SCHROEDER:** I can put it this way. Your
3 schedule puts the Court in a position where we have less time
4 to consider any alternative maps if they're necessary, and
5 we're probably the least expert at doing that. That's the
6 question about special masters, et cetera.

7 So you have a November date proposed. Why can't it
8 be an October date, late September date, something like that,
9 something that would give us more time to react if we have to
10 deal with it? Hopefully, we won't, but we have to plan for
11 that contingency.

12 **MR. STRACH:** Your Honor, that's certainly the Court's
13 prerogative. The only thing I would say on that is to the
14 extent the Court compresses the timetable we've proposed, that
15 will also compress the ability to do some of the public
16 hearings and things that we're talking about.

17 **JUDGE EAGLES:** Well, that's your own fault.

18 **MR. STRACH:** I'm sorry you feel that way, Your Honor,
19 but that is our position. It's like a sliding scale. We've
20 proposed now until November. If the Court says October, or
21 whatever, then as you compress that, you compress the ability
22 to take public input.

23 **JUDGE EAGLES:** So isn't the purpose of the
24 redistricting to correct the unconstitutional racial
25 gerrymandering?

1 **MR. STRACH:** That's the only purpose.

2 **JUDGE EAGLES:** That's the only purpose. It is not to
3 start over from scratch, look at how all the elections have
4 gone in the past four times, '12, '14, '16, figure out what
5 benefits you politically, personally, whatever. That's not the
6 purpose of the redistricting. So I still don't understand why
7 you need so much time. The only purpose is to correct the
8 unconstitutional racial gerrymandering. So why do you need so
9 much time?

10 **MR. STRACH:** Your Honor, to do that, as I've
11 explained, the county groupings are going to have to change
12 significantly, which means the districts themselves will have
13 to change, and the State is entitled -- so long as it corrects
14 the racial gerrymanders, the State is entitled to use and
15 follow its criteria, and that this Court would not have the
16 authority to not let the State otherwise use legitimate
17 criteria so long as the State corrects the gerrymanders.

18 **JUDGE EAGLES:** The evidence at trial was that the map
19 drawing takes virtually no time. So, I mean, what takes time
20 is this public comment, et cetera. The map drawing itself
21 is -- I've forgotten exactly what your expert said, but it
22 didn't take him very long.

23 **MR. STRACH:** Your Honor, with respect, I will go look
24 that up. I don't recall that testimony.

25 These are essentially statewide legislative maps.

1 These are about as complicated as it gets. In a prior case, we
2 were dealing with 13 congressional districts. That is
3 admittedly much simpler. That is why, frankly, that was even
4 able to be done in two weeks, and, frankly, the General
5 Assembly didn't have a choice.

6 **JUDGE EAGLES:** Well, the General Assembly did it
7 before in two weeks back, what was it, 2002, '3?

8 **MR. STRACH:** And, Your Honor, when they did that,
9 those maps were rejected, and I will submit that it's in part
10 because they only had two weeks to do it.

11 **JUDGE EAGLES:** That's a good point. Thank you.

12 **JUDGE SCHROEDER:** What's going to happen -- we'll
13 have to issue an order, but, in the meantime, what's the plan
14 for the next couple of weeks?

15 **MR. STRACH:** Well, Your Honor, the committee met
16 yesterday, had an organizational meeting. Information was put
17 out there. I would anticipate that a meeting will be scheduled
18 soon to discuss criteria, and that will be a meeting to take
19 input from the committee members, et cetera, on criteria, and
20 then another meeting will be scheduled to actually adopt
21 criteria, and then a public hearing will be held on those
22 criteria to make sure the committee is doing what the public
23 wants.

24 **JUDGE SCHROEDER:** Is there any current plan to call
25 the General Assembly back, and, if so, what date is that?

1 **MR. STRACH:** Your Honor, when the General Assembly
2 adjourned June 30th, they adopted an adjournment resolution,
3 which we provided the Court with a link to that the Court can
4 read. That adjournment resolution provides they'll come back
5 on I believe it's August 3. They will then adjourn until
6 September 5, I believe, and then they will adjourn no later
7 than early November to ensure redistricting is completed.

8 **JUDGE SCHROEDER:** Thank you.

9 **MR. STRACH:** Your Honors, if I can simply make a
10 point or two on some of the points that have been made by the
11 Plaintiffs, in particular on this issue of usurpers, illegal
12 legislature.

13 The case that the Plaintiffs cite on that is
14 *Butterworth v. Dempsey*. It was from the '60s. I think it's
15 important to note that in that case, the Connecticut General
16 Assembly didn't just have a few illegal districts, 28, 10,
17 whatever. Every single district was illegal because under
18 their state constitution population was divvied up based on
19 towns, and that created malapportionment and population
20 deviations literally in the hundreds of percentages, like 200
21 percent, 300 percent.

22 **JUDGE EAGLES:** So I just heard you tell me earlier
23 that the Whole County Provision is now being violated. I mean,
24 didn't you say that? You said that as a result of the
25 redistricting, it's require -- that we have required in these

1 districts the whole system has to be looked at again because
2 these county groupings violate the Whole County Provision. So
3 don't we have that same exact situation here?

4 **MR. STRACH:** No, Your Honor. All the districts
5 around the 28 districts are currently legal. When we
6 redistrict, we are going to have to change --

7 **JUDGE EAGLES:** Then why do you need to redistrict
8 them if they're legal?

9 **MR. STRACH:** Well, Your Honor, because there's 28
10 illegal districts, and when we deal with those 28 illegal
11 districts, we will have to change the grouping structure, and
12 that will necessarily result in changes; but that's not because
13 of any illegality found by this Court. That's because the --

14 **JUDGE EAGLES:** I'm not understanding why you have to
15 change the groupings. That's the part I'm not getting. My
16 last question was a bad question. I'm not understanding why
17 you have to change the groupings.

18 **MR. STRACH:** Thank you, Your Honor. Let me try to
19 explain that.

20 **JUDGE EAGLES:** Because if they're illegal, then the
21 argument you were just making -- it's not just 28 districts
22 that are illegal.

23 **MR. STRACH:** Your Honor, under the *Stephenson* case,
24 the initial grouping of the counties is a mathematical formula,
25 and you have to group the single counties that will sustain --

1 that will hold a certain number. Then you have to group the
2 two-county groups, three counties, and so on. That is what you
3 would call the optimum grouping map. That is the grouping that
4 you must follow unless there are VRA issues anywhere in the
5 state that require you then to group around VRA groupings.

6 **JUDGE EAGLES:** Right.

7 **MR. STRACH:** The groupings that we chose in 2011 were
8 based on the VRA districts that have been held illegal. So we
9 will have to go back to the optimum grouping, at least to start
10 with, and then draw the districts around that. That is,
11 though, because of state law. That is not because of --

12 **JUDGE EAGLES:** Well, they're still illegal, arguably,
13 I mean, the Whole County Provision.

14 **MR. STRACH:** No, Your Honor, the districts are not
15 illegal. The groupings are. The districts are not. The
16 groupings will require us to redraw the districts, but the
17 groupings -- we cannot go back to the 2011 groupings. Perhaps
18 that's a better way to say it.

19 **JUDGE WYNN:** I think it's a matter of semantics. I
20 got your point in terms of the districts themselves not being
21 illegal. The problem is that the people elected from those
22 districts were elected when the population was based upon the
23 other illegal districts, and so you're right. The district's
24 legal, but the person that got elected there with the creation
25 of it was because the population was affected by the illegal

1 district, but I don't know why we even need to go --

2 **MR. STRACH:** Your Honor, I'm just trying to address
3 the point of the usurpers, and I'm trying to say that the
4 *Butterworth* case was an extreme --

5 **JUDGE WYNN:** I frankly don't think that's something
6 that needs to be dwelled on a lot.

7 **MR. STRACH:** Okay, Your Honor.

8 **JUDGE WYNN:** I got the point on that, and I got the
9 extreme example of the *Butterworth* case. You're right in terms
10 of that, and maybe that's not here. There are some factors
11 that can be considered in terms of what that means, and my
12 earlier comments in terms of you do have people who are making
13 decisions that are drawing the districts now, that stands
14 because at least in 28 districts, even if -- whether they come
15 from illegal or not illegal, there's something wrong with this
16 legislature in terms of how it's being drawn, but we don't need
17 to go there. We're at the remedy phase now. All we're doing
18 is trying to determine -- we're going to order an election this
19 year, or we're going -- if not, then what time period and maybe
20 in conjunction are we going to ask for these maps.

21 **MR. STRACH:** Let me just point out, Your Honor, and
22 just to finish the point on this particular point, what I
23 wanted to say is that subsequent Supreme Court cases have made
24 it very clear that even in a situation like this, no matter how
25 many districts that are illegal or what the effect of that is,

1 Your Honor, which we might disagree on, a legislature that's
2 elected under an unconstitutional plan is nonetheless a
3 legislature empowered to act. The U.S. Supreme Court has said
4 that on multiple occasions. So --

5 **JUDGE WYNN:** I think we are in agreement on it.

6 **MR. STRACH:** -- this whole --

7 **JUDGE WYNN:** I think we're good. All we're asking is
8 for that legislature to act.

9 **MR. STRACH:** They will.

10 **JUDGE WYNN:** That's the key.

11 **MR. STRACH:** And they will, and they are.

12 Let me just make a couple of points on the election
13 schedule. I think it's very important to note that at least in
14 my experience, if I'm proven wrong, I will be, this will be the
15 first time where you've had this many elections in a 12-month
16 period, major elections, essentially statewide elections; and
17 not only will you have that many elections, about five or so in
18 that period of time, they will be overlapping. The municipal
19 elections will be overlapping with the proposed legislative
20 primary that the Plaintiffs have proposed, and then the March
21 general election will overlap with the filing period for a May
22 primary and a November 2018 election.

23 I cannot think of a more confusing set of election
24 rules for this -- for the public to be under, and when the
25 Court said that the Court should consider intrusion into state

1 sovereignty and the normal operation of the processes of
2 government, the election schedule that's been proposed simply
3 takes a blowtorch to that and just rips it up to shreds. In
4 fact, they're asking this Court, by judicial decree, to tell
5 staff of the elections board just do what you need to do, to
6 heck with the law, to heck with the normal rules, to heck with
7 the normal operations. You all just do it. That is not, we
8 would submit, what we believe the Supreme Court had in mind
9 when they entered their order.

10 **JUDGE EAGLES:** Are you implying that the Court should
11 never order a special election no matter what the circumstances
12 because to do so would disrupt the normal orderly processes?

13 **MR. STRACH:** No, Your Honor.

14 **JUDGE EAGLES:** That's the implication of your
15 argument.

16 **MR. STRACH:** It's not the implication, and that's not
17 what I'm saying.

18 **JUDGE EAGLES:** No? Okay. I misunderstood you then.

19 **MR. STRACH:** My argument is that these are extreme
20 circumstances, and the schedule proposed by the Plaintiffs is
21 an extreme schedule, and it would take a blowtorch to the
22 normal processes of North Carolina government. It would be
23 extremely unfair to the people, who this is about, and it would
24 be completely unworkable. That's our position.

25 **JUDGE WYNN:** The key with the Supreme Court opinion

1 is the Supreme Court didn't tell us -- didn't give us any
2 indication that we couldn't do this. It simply said consider
3 these factors. That's what we will do. We will consider those
4 factors here. The Supreme Court itself, in terms of what it
5 sent us back, simply just vacated and sent it back and affirmed
6 unanimously on the substantive part of the case and said remedy
7 -- go back and take a look at it and look at these factors here
8 in a more balanced way. That's exactly what we will do.

9 **MR. STRACH:** I agree, Your Honor. I believe we're
10 reading the same order from the same sheet of music.

11 Your Honor, I do want to point out that there is
12 evidence in the record, and we've pointed it out before, that
13 to the extent the Court does order a special election, turnout
14 in these elections has historically been very, very low and
15 very, very bad; and we think that's something that the Court
16 should take into account, not only that, but also, obviously,
17 the extra money, et cetera, that such a process would cost.

18 So, Your Honors, we believe that the legislature has
19 a process in place to get maps in front of this Court. We
20 believe that it allows -- that balances all the appropriate
21 factors. It allows for public input. We believe it complies
22 with this Court's order.

23 **JUDGE WYNN:** Where is turnout under one of those
24 three factors? Which of the three factors that does fit under?

25 **MR. STRACH:** Well, Your Honor, I would argue that

1 it's the intrusion on state sovereignty.

2 **JUDGE WYNN:** So it's Number 3?

3 **MR. STRACH:** I believe that's one of them.

4 **JUDGE WYNN:** Need for judicial restraint?

5 **MR. STRACH:** I think it goes under judicial
6 restraint. I also think it goes into the ordinary processes of
7 government because the reason the turnout is low is because the
8 Court is dispensing with a schedule that people are used to,
9 and this schedule would have an election on December 5. I
10 can't think of a worse time of the year to have a special
11 election for turnout purposes.

12 So, Your Honor, the legislature stands ready to act.
13 The legislature wants to comply with this Court's order. It
14 will comply with this Court's order. It is, in fact, complying
15 right now as we speak with this Court's order. It would like
16 to have an opportunity to remedy the defects this Court found
17 in the districts, and it will, in fact, remedy the defects this
18 Court found.

19 We have proposed a schedule, and we appreciate the
20 Court's indulgence of our position. We appreciate the Court's
21 indulgence. We understand the situation that we are in, and we
22 appreciate the Court's consideration. If there's no other
23 questions --

24 **JUDGE WYNN:** Thank you.

25 **JUDGE EAGLES:** All right. Thank you.

1 I think the Plaintiff may have, like, five or six
2 minutes, according to my clock. The clerk may have a little
3 bit different thought.

4 **MS. EARLS:** Thank you, Your Honors. I will be very
5 brief.

6 The first point I want to make is that the districts
7 around the 28 districts that were declared unconstitutional
8 racial gerrymanders are illegal. They are unconstitutional
9 under the state constitution. That's why they need to be
10 redrawn. The *Stephenson* -- I urge you to look at the
11 *Stephenson v. Bartlett* timetable that we put in our briefing,
12 and you will see that the State redrew in two weeks. The Court
13 did not accept those districts, and it self-redrew in one week.
14 So the timetable in *Stephenson* is even more compressed than
15 what we are asking for here.

16 **JUDGE WYNN:** Were there public hearings?

17 **MS. EARLS:** No, not to my recollection.

18 **JUDGE WYNN:** How many districts were being redrawn?

19 **MS. EARLS:** The entire state map, more than this
20 time. I think what you're weighing in the balance is the value
21 of public hearings in a remedial setting, which, as the Court
22 points out, is very different from when you're redrawing every
23 ten years. You've got new census data. There's the population
24 shifts.

25 The legislature's task is to follow the law and

1 remedy the constitutional violations. That's extraordinarily
2 different from starting with new census data, and the clusters
3 are determined already. So the notion that they actually can't
4 accomplish the task isn't true.

5 So you're weighing the balance of the value of public
6 hearings, which are always useful, versus the value of the
7 testimony you heard this morning of people knowing as soon as
8 possible. Candidates, political activists, people who give --
9 donate and give money to campaigns, the value of their civic
10 engagement and their ability to participate in the process I
11 submit to you weighs much more heavily than the value of having
12 some input on what's needed to -- or having extensive input
13 over months -- weeks and months.

14 They can -- with the congressional plans, they had a
15 public hearing. They can have a public hearing in a space of
16 two weeks and get public input, but what you've heard testimony
17 to today from the real-life experiences of candidates and
18 people who support them and who are engaged in the political
19 process is that they need to know. They're already at a
20 disadvantage from not knowing what the districts are, and
21 that's an important value in weighing why the districts need to
22 be drawn now.

23 Let me just say a quick word on the special elections
24 question and the notion that there's too many overlapping
25 elections and it will be too confusing and the turnout will be

1 too low. All of these things -- the scheduling situation that
2 we are in now is because of the delay of the General Assembly
3 in being willing to draw new maps.

4 What we have to weigh in the balance there is the
5 extreme violation that occurred in this case, 28 districts
6 found unconstitutional; and what I would finally suggest to you
7 is that you don't necessarily have to decide together the
8 question of whether there's -- when the General Assembly should
9 redrew and then whether equitably there need to be special
10 elections. You can first require a timetable for redrawing and
11 then determine whether, once we have a map, is there time for
12 elections; but I would ask that you not foreclose the second
13 issue by leaving too long to draw maps on the first issue. I
14 think that you can -- you don't necessarily have to decide both
15 of our motions simultaneously.

16 So with that, I'll answer any questions that the
17 Court has.

18 **JUDGE EAGLES:** No? All right. No questions. Thank
19 you very much. We will take the matter under advisement and
20 enter orders as we decide. Thank you.

21 The Court is adjourned.

22 (END OF PROCEEDINGS AT 12:59 P.M.)

23

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25 Covington, et al. v. NC, et al. Motions 7-27-17

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER

4
5
6 I, Briana L. Bell, Official Court Reporter, certify
7 that the foregoing transcript is a true and correct transcript
8 of the proceedings in the above-entitled matter.

9
10 Dated this 9th day of August 2017.

11
12 
13 Briana L. Bell
14 Briana L. Bell, RPR
Official Court Reporter